

United States
Court of Appeals
for the Ninth Circuit.

SAMUEL H. FRIEND, S. HERBERT FRIEND, LEONARD V. BLOCK,
Co-Partners, Doing Business Under the Firm Name and Style of
S. H. Friend, and Feature Ring Co., Inc.,

Appellants,

vs.

GRANAT BROS., a Corporation,

Appellee.

GRANAT BROS., a Corporation,

Appellant,

vs.

SAMUEL H. FRIEND, S. HERBERT FRIEND and LEONARD V.
BLOCK, Co-Partners, Doing Business Under the Firm Name and
Style of S. H. Friend and Feature Ring Co., Inc.,

Appellees.

HERBERT BROWN and FEATURE RING CO.,

Appellants,

vs.

GRANAT BROS., a corporation,

Appellee.

GRANAT BROS., a corporation,

Appellant,

vs.

HERBERT BROWN and FEATURE RING CO., INC.,

Appellees.

Transcript of Record
IN FOUR VOLUMES

Volume III
(Pages 415 to 723)

PAUL P. O'BRIEN,
CLERK

Appeals from the United States District Court,
Northern District of California,
Southern Division.

United States
Court of Appeals
for the Ninth Circuit.

SAMUEL H. FRIEND, S. HERBERT FRIEND, LEONARD V. BLOCK,
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S. H. Friend, and Feature Ring Co., Inc.,

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BLOCK, Co-Partners, Doing Business Under the Firm Name and
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Transcript of Record
IN FOUR VOLUMES
Volume III
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Appeals from the United States District Court,
Northern District of California,
Southern Division.

PLAINTIFF'S EXHIBIT J3

In the United States District Court, Northern
District of California, Southern Division

Civil Action No. 28219-H

GRANAT BROS., a corporation,

Plaintiff,

vs.

SAMUEL H. FRIEND, S. HERBERT FRIEND
and LEONARD V. BLOCK, copartners, doing
business under the firm name and style of S. H.
FRIEND,

Defendants,

and

FEATURE RING CO., INC.,

Intervening Defendant.

Civil Action No. 28220-H

GRANAT BROS., a corporation,

Plaintiff,

vs.

HERBERT BROWN, an individual,

Defendant,

and

FEATURE RING CO., INC.,

Intervening Defendant.

DEPOSITION OF MORITZ JACOBY

Taken in Behalf of the Plaintiff

Be It Remembered That, pursuant to the Notice

Plaintiff's Exhibit No. J3—(Continued)
of Taking Depositions hereto annexed and the further oral stipulation of counsel appearing in behalf of the respective parties hereinafter set forth, the deposition of Moritz Jacoby was taken in behalf of the plaintiff in the above-entitled actions on Monday, February 7, 1949, beginning at the hour of 10:30 o'clock a.m., at 529 Southwest Broadway, Portland, Oregon, before John S. Beckwith, a Notary Public for Oregon, residing at Portland, Multnomah County, Oregon.

Appearances:

MR. JACK E. HURSH,

Appearing for Messrs. Mellin and Hanscom,
391 Sutter Street,
San Francisco, California,
Attorneys for the Plaintiff.

MR. JAMES M. NAYLOR,

Russ Building,
San Francisco, California,
Appearing for John Vaughan Groner,
Of Attorneys for the Defendants.

(At said time and place the following stipulation was entered into between counsel present in behalf of the respective parties:)

It is stipulated and agreed, by and between the attorneys for the respective parties in the above-entitled actions, that the deposition of Moritz Jacoby may be taken on behalf of the plaintiff in the above-

Plaintiff's Exhibit No. J3—(Continued)

entitled actions, pursuant to the Notice of Taking Depositions hereto annexed, at 529 Southwest Broadway, Portland, Oregon, at the hour of 10:30 o'clock a.m., before John S. Beckwith, a Notary Public for Oregon, and in shorthand [2*] by the said John S. Beckwith.

It is further stipulated that said deposition, when fully transcribed, may be used on the trial of the actions above mentioned as by law provided; that all objections as to the form of the questions are waived unless made at the time the questions are asked, and that all objections as to the materiality, relevancy, and competency of the questions or answers are reserved to the parties until the time of trial.

It is further stipulated that the submission of the deposition, when fully transcribed, to the witness for examination and reading to or by him and opportunity to the witness to make any changes in form or substance and the signing of same by the witness are hereby expressly waived.

* Page numbering appearing at top of page of original Reporter's Transcript.

Plaintiff's Exhibit No. J3—(Continued)

MORITZ JACOBY

was thereupon produced as a witness in behalf of the plaintiff herein and, having been first duly sworn by the Notary, was examined and testified as follows:

Direct Examination

By Mr. Hursh:

Q. Mr. Jacoby, what is your name?

A. Moritz Jacoby.

Q. Where do you reside?

A. At Portland, Oregon.

Q. At what address? [3]

A. Envoy Apartments. I don't know the street number. I have only lived there twenty years.

Q. What is your occupation?

A. Retail jeweler.

Q. How long have you been in the jewelry business?

A. In the retail business or the length of time in the jewelry business?

Q. The length of time in the jewelry business?

A. Well, it would be about 43 years, the length of time in the jewelry business; in the retail business here in the city 39 years.

Q. Have you ever heard of a company by the name of Granat Bros.?

A. Oh, sure.

Q. Do you know where they are located?

A. San Francisco.

Q. How long have you known of Granat Bros.?

A. As a concern or as individuals?

Plaintiff's Exhibit No. J3—(Continued)

(Deposition of Moritz Jacoby.)

Q. As a concern.

A. It must be around close to thirty years or longer. It is many years back.

Q. What type of merchandise does Granat Bros. manufacture and sell?

A. Well, they make the finest wedding rings and rings, diamond rings and other jewelry—the finest quality that is obtainable. [4]

Q. Have you ever heard of a wedding ring and engagement ring ensemble sold under the trademark "Wed-Lok"? A. Oh, yes.

Q. Who manufactures the Wed-Lok ring ensemble? A. Granat Bros.

Q. How long have you known of this ring ensemble that is sold under the trade name "Wed-Lok"? A. Oh, ten years or longer.

Q. When you hear of the word "Lock" either spelled L-o-k or L-o-c-k used in connection with wedding ring and engagement ring ensembles, with whose product do you associate it?

Mr. Naylor: Just a moment. Will you read that question?

(Last question read.)

Mr. Naylor: I will object to that question as being irrelevant and immaterial, as there is no claim advanced here for either the word L-o-c-k or L-o-k, and it is a question that pertains to an alleged mark that is not in issue.

Plaintiff's Exhibit No. J3—(Continued)
(Deposition of Moritz Jacoby.)

Mr. Hursh: Will you answer the question, Mr. Jacoby?

A. I think of Granat Bros., their product.

Q. Do you know the quality of the product sold by Granat Bros.?

A. Nothing but the finest thing that is made.

Q. Do you know what reputation Granat Bros. has in the Portland area?

A. Well, they have got such an excellent reputation that everybody in the city around here tries to get their line, and they [5] are envious of the fact that we have it.

Mr. Naylor: I object to the part of the answer that purports to recite what everybody wants as being purely hearsay.

The Witness: Oh, no; that is not hearsay.

Mr. Naylor: I move it be stricken.

Q. (By Mr. Hursh): Have other jewelers ever advised you that they would like to handle the Granat Bros. ring? A. Oh, yes.

Mr. Naylor: That is objected to as calling purely for hearsay.

Q. (By Mr. Hursh): Do you sell Granat Bros. products in your store?

A. Yes; about 99 per cent—90 per cent of our stock is things that they make.

Q. What type of product do you refer to?

A. Wedding rings, ensembles, diamond rings and ensembles, men's wedding rings—everything that they make.

Plaintiff's Exhibit No. J3—(Continued)

(Deposition of Moritz Jacoby.)

Q. What is the quality of this Granat Bros. merchandise that you sell?

A. Oh, it is nothing but the tops, the finest.

Q. Do you sell Wed-Lok ring ensembles?

A. Yes, lots of them.

Q. Do you advertise these Wed-Lok ring ensembles? A. Very extensively. [6]

Q. Just what type of advertising do you employ in advertising Wed-Lok ring ensembles?

A. Newspapers.

Q. Have you any of those advertisements here in your store? A. Yes.

Q. Could you produce them for me, please?

A. How far back do you want me to go?

Q. As early as you can.

A. We only have our records since 1947 in here.

Q. Mr. Jacoby, you have produced a book of advertising material showing newspaper ads. Was this book kept in the regular course of your business showing the various advertisements that you placed in the Portland newspapers? A. Yes, sure.

Q. I notice under each ad is a pencil notation stating the date and also in some instances the paper in which the ad appeared. Is that kept regularly in your business? A. Oh, yes.

Q. And this information appears under each of the ads in this book? A. Yes.

Q. I note an ad dated May 28, 1947, and the notation "Wed."—that is evidently the Wednesday Journal? A. Yes, Wednesday's Journal.

Plaintiff's Exhibit No. J3—(Continued)
(Deposition of Moritz Jacoby.)

Q. Do you know whether or not that ad appeared in the Wednesday [7] Journal of May 28th, 1947?

A. This is a copy from the paper. We took it out of the paper.

Q. The same ad appeared in the paper on that date? A. Yes.

Mr. Hursh: I ask that the reporter mark this as Exhibit 1.

(The advertisement referred to, dated May 28, 1947, was thereupon marked as Plaintiff's Exhibit 1, and a photostatic copy thereof is made a part of this deposition.)

Mr. Hursh: Is it stipulated that photostatic copies of these pages may be made and substituted for the originals?

Mr. Naylor: Yes. I suggest the whole page of the book be photostated so that the pencil notations will appear.

Mr. Hursh: Yes, we will do that in each instance.

The Witness: Here is one before that. That is May 25, 1947, over here.

Mr. Hursh: You point to an ad on the opposite page of this book that bears the notation "Sunday Oregonian, May 25, 1947." That ad was in the paper at that time on that date?

A. Correct.

Mr. Hursh: I ask that that be introduced as Exhibit 2.

Plaintiff's Exhibit No. J3—(Continued)

(Deposition of Moritz Jacoby.)

(The advertisement referred to, dated May 25, 1947, was thereupon marked as Plaintiff's Exhibit 2, and a photostatic copy thereof is made a part of this deposition.) [8]

Mr. Naylor: For clarification, in what paper did Exhibit 1 appear?

A. 1 was in the Journal. On the 28th was in the Journal and on the 25th was in the Oregonian.

Mr. Naylor: Thank you.

The Witness: Then we have another one here, June 1st.

Mr. Hursh: You point to another ad appearing in this book. It bears the notation, "Sunday Oregonian, June 1st, 1947." I ask that that advertisement be marked as Exhibit 3.

(The advertisement referred to, dated June 1st, 1947, was thereupon marked as Plaintiff's Exhibit 3, and a photostatic copy thereof is made a part of this deposition.)

The Witness: This is the Journal, June the 4th.

Mr. Hursh: You have produced another book, and in that book you have an advertisement advertising Wed-Lok wedding and engagement rings. This advertisement has a notation, "Wed. Journal, June 4, 1947." That is an ad that was run by your firm in the Journal of that date?

A. Oh, yes; correct.

Mr. Hursh: I ask that be marked as Exhibit 4.

Plaintiff's Exhibit No. J3—(Continued)
(Deposition of Moritz Jacoby.)

(The advertisement referred to, dated June 4, 1947, was thereupon marked as Plaintiff's Exhibit 4, and a photostatic copy thereof is made a part of this deposition.) [9]

Mr. Hursh: You have an ad that appeared—correct me if I am wrong, Mr. Jacoby—in the Sunday Oregonian, June 8th, 1947.

A. Yes, June 8th.

Mr. Hursh: We will mark that Exhibit 5 and introduce it in evidence as such.

(The advertisement referred to, dated June 8th, 1947, was thereupon marked as Plaintiff's Exhibit 5, and a photostatic copy thereof is made a part of this deposition.)

The Witness: Here is one in the Oregonian, June the 15th.

Mr. Hursh: We will mark that Exhibit 6.

(The advertisement referred to, dated June 15th, 1947, was thereupon marked as Plaintiff's Exhibit 6, and a photostatic copy thereof is made a part of this deposition.)

The Witness: There are two of them here, on June the 29th and on July—that was the Sunday Oregonian, June the 29th, '47, and we have July 2nd, 1947, on a Wednesday in the Oregon Journal.

Mr. Hursh: We will mark those two ads as one exhibit, and that will be Exhibit 7.

Plaintiff's Exhibit No. J3—(Continued)
(Deposition of Moritz Jacoby.)

(The advertisements referred to, dated June 29th and July 2nd, 1947, respectively, were thereupon marked as Plaintiff's Exhibit 7, and a photostatic copy [10] thereof is made a part of this deposition.)

Mr. Hursh: We will introduce that in evidence as Exhibit 7. What is the next ad that appears?

A. July the 20th, Sunday, July the 20th, in the Oregonian. This is all 1947.

Mr. Hursh: We will introduce that in evidence as Exhibit 8.

(The advertisement referred to, dated July 20th, 1947, was thereupon marked as Plaintiff's Exhibit 8, and a photostatic copy thereof is made a part of this deposition.)

The Witness: There are two more over here: Wednesday Journal, July 23rd, and Sunday Oregonian, July 27th.

Mr. Hursh: Those are both in 1947, are they?

A. Yes.

Mr. Hursh: We will mark that full page as Exhibit 9 and introduce both of these advertisements.

(The advertisements referred to, dated July 23rd and July 27th, 1947, respectively, were

Plaintiff's Exhibit No. J3—(Continued)
(Deposition of Moritz Jacoby.)

thereupon marked as Plaintiff's Exhibit 9, and a photostatic copy thereof is made a part of this deposition.)

Mr. Naylor: That is in the Oregonian?

A. One is in the Journal and one in the Oregonian.

Mr. Naylor: Both the same date?

A. No, the Journal was on the 23rd of July and the Oregonian [11] was on the 27th of July.

Mr. Hursh: When did the next ads appear?

A. Well, we have got the Sunday Oregonian, August 3rd, and Wednesday's Journal, July 30th.

Q. Those are both in 1947? A. All 1947.

Mr. Hursh: I will mark that full page, including both of the ads, as Exhibit 10 and introduce it in evidence.

(The advertisements referred to, dated August 3rd and July 30th, 1947, respectively, were thereupon marked as Plaintiff's Exhibit 10, and a photostatic copy thereof is made a part of this deposition.)

The Witness: Then we have got the Sunday Oregonian, August 10th.

Mr. Hursh: We will mark that as Exhibit 11 and introduce it in evidence as Exhibit 11.

(The advertisement referred to, dated August 10th, 1947, was thereupon marked as

Plaintiff's Exhibit No. J3—(Continued)
(Deposition of Moritz Jacoby.)

Plaintiff's Exhibit 11, and a photostatic copy thereof is made a part of this deposition.)

The Witness: We have got the Sunday Oregonian, August the 24th, 1947.

Mr. Hursh: We will introduce that advertisement as Exhibit 12.

(The advertisement referred to, dated August 24th, 1947, [12] was thereupon marked as Plaintiff's Exhibit 12, and a photostatic copy thereof is made a part of this deposition.)

The Witness: Here is one here. This is the Sunday Oregonian, September the 14th.

Q. 1947? A. Yes, all '47.

Mr. Hursh: We will mark that Exhibit 13 and introduce it in evidence.

(The advertisement referred to, dated September 14, 1947, was thereupon marked as Plaintiff's Exhibit 13, and a photostatic copy thereof is made a part of this deposition.)

The Witness: Wednesday's Journal, September 17th, 1947.

Mr. Hursh: We will mark that Exhibit 14 and introduce it in evidence as Exhibit 14.

(The advertisement referred to, dated September 17, 1947, was thereupon marked as Plaintiff's Exhibit 14, and a photostatic copy thereof is made a part of this deposition.)

Plaintiff's Exhibit No. J3—(Continued)
(Deposition of Moritz Jacoby.)

The Witness: The next one I have is the Sunday Oregonian, September 28th, 1947.

Mr. Hursh: We will introduce that as Exhibit 15.

(The advertisement referred to, dated September 28th, 1947, was thereupon marked as Plaintiff's Exhibit [13] 15, and a photostatic copy thereof is made a part of this deposition.)

The Witness: We have got another one over here. I hope they got them all in here. That is all, probably. October the 5th, the Sunday Oregonian, 1947.

Mr. Hursh: We will mark that Exhibit 16 and introduce it in evidence.

(The advertisement referred to, dated October 5th, 1947, was thereupon marked as Plaintiff's Exhibit 16, and a photostatic copy thereof is made a part of this deposition.)

The Witness: Here is one October 19th, Sunday.

Mr. Hursh: We will mark that Exhibit 17 and introduce it in evidence. That is October 19th, 1947? A. Yes.

(The advertisement referred to, dated October 19th, 1947, was thereupon marked as Plaintiff's Exhibit 17, and a photostatic copy thereof is made a part of this deposition.)

The Witness: Wednesday Journal, November 9th.

Plaintiff's Exhibit No. J3—(Continued)
(Deposition of Moritz Jacoby.)

Mr. Hursh: We will mark that Exhibit 18 and introduce it in evidence.

(The advertisement referred to, dated November 9th, 1947, was thereupon marked as Plaintiff's Exhibit 18, and a photostatic copy thereof is made a part [14] of this deposition.)

The Witness: January 4th, 1948.

Mr. Hursh: That will be marked Exhibit 19, and we will introduce it in evidence as Exhibit 19.

(The advertisement referred to, dated January 4, 1948, was thereupon marked as Plaintiff's Exhibit 19, and a photostatic copy thereof is made a part of this deposition.)

The Witness: There is two on one page here. The Sunday Oregonian, January 18th, and the Wednesday Journal. They call that the Oregon Journal. That is January the 14th.

Q. Those were in 1948?

A. Yes, that is in '48.

Mr. Hursh: We will mark that Exhibit 20 and introduce it in evidence.

(The advertisements referred to, dated January 18th and January 14th, 1948, were thereupon marked as Plaintiff's Exhibit 20, and a photostatic copy thereof is made a part of this deposition.)

The Witness: Here we have got January 28th

Plaintiff's Exhibit No. J3—(Continued)

(Deposition of Moritz Jacoby.)

in the Journal and we have got January 25th in the Sunday Oregonian—cut that out. Sunday the 25th, that is not one. Just this one on Wednesday, January 28th.

Mr. Hursh: We will introduce in evidence that one advertisement that appears—— [15]

The Witness: Pardon me just a minute. This is not one. The Wednesday Journal, the 28th, and the January 25th are not either one of them Wed-Loks. Excuse me.

Mr. Naylor: Will you state what they are advertising?

A. Pardon?

Mr. Naylor: Will you state what goods they are advertising?

A. Diamond rings, diamond ensembles.

Mr. Hursh: Of whose manufacture?

A. Granat Bros.

Mr. Naylor: Is there a name given to them?

A. The one in the Journal—the Journal hasn't any particular design name that we used. It has a design name but we didn't use it. They have a design name down there for it. The one that ran in the Sunday Oregonian on January 28th is under the heading of Threesomes, Minuet, Fantasy, and Georgian.

Mr. Hursh: What is the next ad appearing in this book, Mr. Jacoby?

A. That is the Sunday Oregonian, February 1st, 1948. This is a Wed-Lok ad.

Plaintiff's Exhibit No. J3—(Continued)
(Deposition of Moritz Jacoby.)

Mr. Hursh: We will mark that Exhibit 21 and introduce it in evidence.

(The advertisement referred to, dated February 1, 1948, was thereupon marked as Plaintiff's Exhibit 21, and a photostatic copy thereof is made a part of this deposition.) [16]

The Witness: We have got the Sunday Oregonian, February 15, '48. That is just a year ago.

Mr. Hursh: I will introduce that in evidence as Exhibit 22.

(The advertisement referred to, dated February 15, 1948, was thereupon marked as Plaintiff's Exhibit 22, and a photostatic copy thereof is made a part of this deposition.)

The Witness: Then we have got the Sunday Oregonian, February 22.

Mr. Hursh: We will introduce that as Exhibit 23.

(The advertisement referred to, dated February 22, 1948, was thereupon marked as Plaintiff's Exhibit 23, and a photostatic copy thereof is made a part of this deposition.)

The Witness: The Sunday Oregonian, March 14.

Mr. Hursh: We will introduce that in evidence as Exhibit 24.

(The advertisement referred to, dated March 14, 1948, was thereupon marked as Plaintiff's

Plaintiff's Exhibit No. J3—(Continued)
(Deposition of Moritz Jacoby.)

Exhibit 24, and a photostatic copy thereof is made a part of this deposition.)

The Witness: Here is one here, April 7th. That is in the Wednesday Journal, April the 7th.

Mr. Hursh: 1948? [17]

A. Yes, that is all '48.

Mr. Hursh: We will introduce that exhibit as Exhibit 25.

(The advertisement referred to, dated April 7, 1948, was thereupon marked as Plaintiff's Exhibit 25, and a photostatic copy thereof is made a part of this deposition.)

The Witness: Here is another one, the Sunday Oregonian, April the 18th.

Mr. Hursh: We will introduce that as Exhibit 26.

(The advertisement referred to, dated April 18, 1948, was thereupon marked as Plaintiff's Exhibit 26, and a photostatic copy thereof is made a part of this deposition.)

The Witness: We have got the Sunday Oregonian, April 25th.

Mr. Hursh: We will introduce that advertisement as Exhibit 27.

(The advertisement referred to, dated April 25, 1948, was thereupon marked as Plaintiff's Exhibit 27, and a photostatic copy thereof is made a part of this deposition.)

Plaintiff's Exhibit No. J3—(Continued)

(Deposition of Moritz Jacoby.)

The Witness: That is the Sunday Oregonian, May the 9th.

Mr. Hursh: We will introduce that as Exhibit 28.

(The advertisement referred to, dated May 9th, 1948, was thereupon marked as Plaintiff's Exhibit 28, and a photostatic copy thereof is made a part [18] of this deposition.)

The Witness: The Sunday Oregonian, June the 13th.

Mr. Hursh: That will be Exhibit 29. We will introduce that in evidence.

(The advertisement referred to, dated June 13th, 1948, was thereupon marked as Plaintiff's Exhibit 29, and a photostatic copy thereof is made a part of this deposition.)

The Witness: Here is another one, July 4th—Sunday, July 4th.

Mr. Hursh: We will introduce that as Exhibit 30.

(The advertisement referred to, dated July 4th, 1948, was thereupon marked as Plaintiff's Exhibit 30, and a photostatic copy thereof is made a part of this deposition.)

Mr. Naylor: Is that the Sunday Oregonian?

A. Yes, it is in the Oregonian. All our ads on Sundays are in the Oregonian and on week days are in the Journal. Now here is two of them: The

Plaintiff's Exhibit No. J3—(Continued)

(Deposition of Moritz Jacoby.)

Wednesday Journal, July 21st, and the Sunday Oregonian, July 25th.

Mr. Hursh: Both in 1948?

A. Right.

Mr. Hursh: We will introduce those as Exhibit 31.

(The advertisements referred to, dated July 21, and July 25, 1948, were thereupon marked as Plaintiff's [19] Exhibit 31, and a photostatic copy thereof is made a part of this deposition.)

The Witness: This is the Sunday Oregonian, August 21.

Mr. Hursh: That will be introduced as Exhibit 32.

(The advertisement referred to, dated August 21, 1948, was thereupon marked as Plaintiff's Exhibit 32, and a photostatic copy thereof is made a part of this deposition.)

Mr. Naylor: To which we object as being an advertisement of Wed-Lok after commencement of this action. It has no bearing on the issues of the case.

Mr. Hursh: Do you want to make that as a continuing objection, because I am going to introduce all of these ads?

Mr. Naylor: Let it be stipulated that we have a continuing objection to all advertisements purporting to have been inserted in any media after

Plaintiff's Exhibit No. J3—(Continued)

(Deposition of Moritz Jacoby.)

the date of the commencement of this action, August 3rd, 1948, as being immaterial to any issue.

Mr. Hursh: So stipulated.

The Witness: This one is the Sunday Oregonian, October the 10th.

Mr. Hursh: That will be Exhibit 33.

(The advertisement referred to, dated October 10th, 1948, was thereupon marked as Plaintiff's Exhibit 33, and a photostatic copy thereof is made a part of [20] this deposition.)

The Witness: This is the Wednesday Journal, October the 6th.

Mr. Hursh: We will introduce that as Exhibit 34.

(The advertisement referred to, dated October 6th, 1948, was thereupon marked as Plaintiff's Exhibit 34, and a photostatic copy thereof is made a part of this deposition.)

The Witness: This is Sunday, December the 26th, 1948.

Mr. Hursh: We will introduce that as Exhibit 35.

(The advertisement referred to, dated December 26, 1948, was thereupon marked as Plaintiff's Exhibit 35, and a photostatic copy thereof is made a part of this deposition.)

Mr. Naylor: What is the date of that?

A. December 26th.

Q. (By Mr. Hursh): 1948; is that correct?

Plaintiff's Exhibit No. J3—(Continued)
(Deposition of Moritz Jacoby.)

A. That is correct. This is January 19th. It is the Wednesday Journal. That was the first Wednesday, I believe, in January. They didn't write the date in on this. It is the Wednesday Journal, January 19th, 1949.

Mr. Hursh: That ad did actually appear in the Journal on January 19th, 1949? A. Oh, yes.

Mr. Hursh: We will introduce that as Exhibit 36.

(The advertisement referred to, dated January 19, 1949, was thereupon marked as Plaintiff's Exhibit 36, and a photostatic copy thereof is made a part of this deposition.)

The Witness: This is the Sunday Oregonian, January the 23rd.

Mr. Hursh: That will be introduced in evidence as Exhibit 37.

(The advertisement referred to, dated January 23rd, 1949, was thereupon marked as Plaintiff's Exhibit 37, and a photostatic copy thereof is made a part of this deposition.)

The Witness: That is all.

Q. (By Mr. Hursh): Mr. Jacoby, how long have you known of the trade-mark "Wed-Lok"?

A. Oh, ten years or longer.

Q. How long have you sold ring ensembles under the trade-mark "Wed-Lok"?

A. When they were first manufactured by Granat Bros. The exact date I could not give you,

Plaintiff's Exhibit No. J3—(Continued)

(Deposition of Moritz Jacoby.)

but I know it has been at least 10 years or longer.

Q. Do you have any records showing your purchases from Granat Bros. of ring ensembles?

A. Yes, I have got a record here of Wed-Lok rings from 1937.

Q. Is this record one of your regular office records? [22]

A. Yes, it is, our diamond register, one of our regular records.

Q. This is kept under your supervision, is it?

A. Yes. That is our stock record book.

Mr. Naylor: May I see this page? Are you offering that?

Mr. Hursh: Yes, I will offer this page as Exhibit 38.

Mr. Naylor: To which we object on the ground that no foundation has been laid, and that the same is incompetent and irrelevant to any issue in this case as thus presented.

(The page from the register referred to was thereupon marked as Plaintiff's Exhibit 38, and a photostatic copy thereof is made a part of this deposition.)

Q. (By Mr. Hursh): Do the notations appearing on this page showing Wed-Lok rings mean that these rings were Grant Bros. products?

A. Well, everything in this book is Granat Bros. products unless otherwise marked.

Plaintiff's Exhibit No. J3—(Continued)
(Deposition of Moritz Jacoby.)

Q. Does this show your purchases of such ring ensembles under the trade-mark "Wed-Lok"?

A. Well, yes. Here is the style name. They use the style name and everything. Here, this was put in stock May the 10th, 1937, and this is their design "Wed-Lok".

Q. What is your practice with respect to selling these rings to the public? What trade-mark do you sell them under?

A. Under the name of Wed-Lok.

Q. I show you another page in this book and ask if you find any [23] notations of your purchases of wedding ring and engagement ring ensembles under the trade-mark "Wed-Lok"?

Mr. Naylor: To facilitate identification of the record, will you use a number where specified?

The Witness: Our stock number, you mean?

Mr. Naylor: I don't know what number it is; any number.

The Witness: We have our stock number.

Q. (By Mr. Hursh): Is this number at the head of the column the stock number that you employ? A. Yes.

Q. Referring to Exhibit 38, what date is that?

A. May the 10th, 1937.

Q. What number is that? A. 8093.

Q. What type ring is that?

A. Wed-Lok. And 8094, that is Wed-Lok.

Mr. Hursh: I will mark this page as Exhibit 39 and introduce it in evidence.

Plaintiff's Exhibit No. J3—(Continued)
(Deposition of Moritz Jacoby.)

(The page in the register referred to was thereupon marked as Plaintiff's Exhibit 39, and a photostatic copy thereof is made a part of this deposition.)

Q. (By Mr. Hursh): Mr. Jacoby, will you identify the Wed-Lok ring ensembles that are disclosed on that page?

A. We have 8104, 8105, 8106, and 8107, on May 11th, 1937.

Q. And those were all resold by you under the trade-mark "Wed-Lok"? [24]

A. Yes.

Mr. Naylor: What is the date? May 11th?

A. May 11th. 8104, 8105, 8106, and 8107.

Mr. Hursh: I refer you to 8103. What is that?

A. That is what we call the Interlock, the Wed-Lok Interlock.

Mr. Hursh: I will have this page marked Exhibit 40 and introduce it in evidence as such.

(The page in the register referred to was thereupon marked as Plaintiff's Exhibit 40, and a photostatic copy thereof is made a part of this deposition.)

Mr. Hursh: I will ask you if you can identify any Wed-Lok ring ensembles on that page and give the order numbers.

A. Yes. 8110, 8111, 8118 and 8120.

Mr. Naylor: All May 11th?

Plaintiff's Exhibit No. J3—(Continued)
(Deposition of Moritz Jacoby.)

A. All May 11th.

Mr. Naylor: Yes.

The Witness: That is the day we entered them into our stock.

Mr. Hursh: I see on some of these a later date has been placed in there. What date is that?

A. That is May the 17th.

Q. That refers to what?

A. Right here. We have got this one, 8118 and 8120.

Mr. Hursh: I will mark the next page as Exhibit 41.

(The page in the register referred to was thereupon [25] marked as Plaintiff's Exhibit 41, and a photostatic copy thereof is made a part of this deposition.)

Mr. Hursh: I will ask you to identify the Wed-Lok rings by date and number that are found on that page.

A. Well, May the 27th, 1937, our stock number 8133, and June 7th, 1937, 8142, and 8143 on the same date, June 7th.

Mr. Naylor: Mr. Groner has advised me that Mr. William J. O'Hearn, Jr., will appear on the Aurora, Illinois, Chicago, Illinois, and Buffalo, New York, depositions. It is stipulated that the Aurora depositions may be commenced at 11:00 a.m. as a matter of accommodation to Mr. O'Hearn in view of the train schedules.

Plaintiff's Exhibit No. J3—(Continued)

(Deposition of Moritz Jacoby.)

Mr. Hursh: It is so stipulated. It is also stipulated that the original notice shall be attached to this deposition and copies thereof to subsequent depositions?

Mr. Naylor: Yes.

Mr. Hursh: All right. The next page is marked Exhibit 42, and I will introduce it in evidence as such.

(The page of the register referred to was thereupon marked as Plaintiff's Exhibit 42, and a photostatic copy thereof is made a part of this deposition.)

Mr. Hursh: I will ask you to identify the Wed-Lok rings by date and number.

A. June the 29th, 1937, 8159.

Mr. Hursh: The next page is marked Exhibit 43 and so [26] introduced.

(The page from the register referred to was thereupon marked as Plaintiff's Exhibit 43, and a photostatic copy thereof is made a part of this deposition.)

Mr. Hursh: Can you identify the Wed-Lok rings appearing there?

A. Yes, on July 3rd, 1937, No. 8179.

Mr. Hursh: The next page I will mark Exhibit 44, and introduce it in evidence.

(The page from the register referred to was thereupon marked as Plaintiff's Exhibit 44, and

Plaintiff's Exhibit No. J3—(Continued)
(Deposition of Moritz Jacoby.)

a photostatic copy thereof is made a part of this deposition.)

Q. (By Mr. Hursh): Will you identify the Wed-Lok rings on that page?

A. On October the 23rd, '37, our number 8284.

Mr. Hursh: I will introduce the next page as Exhibit 45.

(The page from the register referred to was thereupon marked as Plaintiff's Exhibit 45, and a photostatic copy thereof is made a part of this deposition.)

Mr. Hursh: I will ask that you identify the Wed-Lok rings.

A. October 26, 1937, 8291, and on the same date 8294.

Mr. Hursh: The next page will be marked Exhibit 46.

(The page from the register referred to was thereupon marked as Plaintiff's Exhibit 46, and a photostatic copy thereof is made a part of this deposition.) [27]

Mr. Hursh: Will you identify the Wed-Lok ring ensembles on that page?

A. November 15, 1937, 8355, and on the same date 8358.

Mr. Hursh: The next page will be marked Exhibit 47 and introduced in evidence as Exhibit 47.

Plaintiff's Exhibit No. J3—(Continued)

(Deposition of Moritz Jacoby.)

(The page from the register referred to was thereupon marked as Plaintiff's Exhibit 47, and a photostatic copy thereof is made a part of this deposition.)

Mr. Hursh: Will you identify the Wed-Lok rings on that page?

A. May 2nd, '38, 8458—pardon me; 8453.

Mr. Naylor: And the date of that?

A. May the 3rd, 1938.

Mr. Hursh: Exhibit 48 will be the next page.

(The page from the register referred to was thereupon marked as Plaintiff's Exhibit 48, and a photostatic copy thereof is made a part of this deposition.)

Mr. Hursh: Where Wed-Lok is noted will you identify that?

A. May the 26th, 1938, 8464, and 8468 on the same date.

Mr. Hursh: The next page on which Wed-Lok rings is noted will be marked Exhibit 49.

(The page from the register referred to was thereupon marked as Plaintiff's Exhibit 49, and a photostatic copy thereof is made a part of this deposition.)

Mr. Hursh: Will you note the Wed-Lok rings?

A. September the 15th, 1938, 8583.

Mr. Hursh: The next page will be marked Exhibit 50.

Plaintiff's Exhibit No. J3—(Continued)
(Deposition of Moritz Jacoby.)

(The page from the register referred to was thereupon marked as Plaintiff's Exhibit 50, and a photostatic copy thereof is made a part of this deposition.)

Mr. Hursh: Will you identify the Wed-Lok rings?

A. November 11th, 1939, our No. 9020.

Mr. Hursh: The next page will be marked Exhibit 51.

(The page from the register referred to was thereupon marked as Plaintiff's Exhibit 51, and a photostatic copy thereof is made a part of this deposition.)

Mr. Hursh: Will you identify the Wed-Lok rings on that page?

A. December the 9th, 1939.

Q. What is the number? A. 9081.

Mr. Hursh: This page will be marked Exhibit 52.

(The page from the register referred to was thereupon marked as Plaintiff's Exhibit 52, and a photostatic copy thereof is made a part of this deposition.)

Mr. Hursh: Do you find any Wed-Lok rings noted?

A. October 11, 1941, No. 9810.

Q. Were all of these rings that you have iden-

Plaintiff's Exhibit No. J3—(Continued)

(Deposition of Moritz Jacoby.)

tified as sold under the trade-mark "Wed-Lok" resold by you under the same trade-mark?

A. Oh, yes.

Q. Have you continuously, so long as you have been able to secure [29] Wed-Lok rings from Granat Bros., purchased them and sold them?

A. Oh, yes.

Mr. Naylor: That is objected to as hypothetical and not calling for the best evidence. If there are records, let's see them.

Mr. Hursh: I notice that there are no records in this book of Wed-Lok ring ensembles after the ensemble noted on Exhibit 52. Do you have any explanation for the lack of Wed-Lok rings found in your records after that date?

A. Well, during the War they were not making all those styles. They were just making a few, a certain few rings. They eliminated making a lot of them.

Q. What percentage of wedding ring and engagement ring sales would you say you make under the trade-mark "Wed-Lok"?

Mr. Naylor: Let's get some time in this question.

Mr. Hursh: We will set it for the past year.

A. Well, I never kept track of it—you mean the percentage compared to other ensembles we sell?

Q. Yes, wedding ring-engagement ring ensembles you sell.

Plaintiff's Exhibit No. J3—(Continued)
(Deposition of Moritz Jacoby.)

A. Oh, at least one-third is as close as I could say.

Q. I noticed on coming into your store you have a display of Wed-Lok rings. How long has that display been in your window?

A. We keep changing displays around. We have one in there all the time.

Q. Do you feature Wed-Lok rings in those displays? A. Oh, yes. [30]

Q. Have you ever heard of a wedding ring-engagement ring ensemble sold under the trade-mark "Feature Lock"? A. Yes.

Q. When you first heard of this Feature Lock wedding ring-engagement ring ensemble what was your first reaction?

A. Well, the first I heard of it——

Mr. Naylor: That is objected to as calling for an opinion of this witness.

Mr. Hursh: Continue.

A. I didn't hear, but I picked up the paper one evening and saw an ad of those Feature Lock rings, and I hit the ceiling because I thought that Granat Bros. were double-crossing me. For a minute I thought it was the same identical thing.

Q. What do you mean when you state that you thought Granat Bros. was double-crossing you?

Mr. Naylor: I move that that part of the answer in which he expresses the opinion be stricken.

Mr. Hursh: Will you read the question?

Plaintiff's Exhibit No. J3—(Continued)

(Deposition of Moritz Jacoby.)

(Last question read.)

A. Well, we have an understanding here with them. There is only myself and another jeweler that they sell to, and I thought they had picked up another jeweler.

Q. How long ago was it that you first heard of this Feature Lock engagement ring ensemble?

A. It was close to a year ago. [31]

Q. To whose product did you think the trade-mark "Feature Lock" was applied when you first saw it?

A. Why, I thought it was a Granat Bros. product.

Mr. Naylor: That is objected to for the same reason, calling purely for the opinion of this witness.

Mr. Hursh: At the time you first heard of this Feature Lock trade-mark were you confused as to whose product the trade-mark was applied to?

Mr. Naylor: That is objected to for the obvious reason it is purely calling for the opinion and conclusion of this witness, which can have no bearing on the outcome of this case; and, furthermore, it seeks to oust the Judge from a thing yet to be decided.

Mr. Hursh: It is asking for the actual state of mind of this witness when he first heard of this trade-mark, which has an important bearing upon the issues raised by the pleadings in this case.

Plaintiff's Exhibit No. J3—(Continued)
(Deposition of Moritz Jacoby.)

Q. Will you state whether or not the word "Lok" is a valuable part of the trade-mark "Wed-Lok" when applied to wedding ring and engagement ring ensembles?

Mr. Naylor: That is objected to for the obvious reason, as previously stated, that the word "Lock," no matter how it is spelled, not associated with other words, has no materiality to any issue in this case because no rights are claimed therein.

Mr. Hursh: Will you answer. [32]

The Witness: Let me get the question.

(Last question read.)

A. Well, yes.

Q. (By Mr. Hursh): Have you ever had customers come into your store and ask for ring ensembles, calling for them by the trade-mark "Wed-Lok"? A. Oh, yes; lots of them.

Q. Does that occur frequently?

A. Oh, yes. We also have them come in here and ask for Wed-Loks, and then when we show them to them they say, "Why, this is entirely different than I have seen elsewhere." That just happened here a few days ago.

Q. Did you ever have customers come in and ask for rings by calling them lock ring ensembles?

Mr. Naylor: How do you spell that, Mr. Hursh?

Mr. Hursh: It makes no difference, either l-o-c-k or l-o-k. They don't usually spell it when they

Plaintiff's Exhibit No. J3—(Continued)

(Deposition of Moritz Jacoby.)

come in and ask for a ring in that particular manner.

A. Oh, yes, they come and ask for lock rings.

Mr. Naylor: That is objected to as calling for hearsay.

Mr. Hursh: Were you ever offered Feature Lock mountings?

A. Oh, yes.

Q. Who made such an offer to you?

A. Mayer Bros. in Seattle.

Q. Have you ever seen the Feature Lock mountings? [33] A. Yes.

Q. What would you say the quality of the Feature Lock mountings would be as compared to the Wed-Lok ring ensembles?

Mr. Naylor: That is objected to as calling for the opinion of this witness, which would have no bearing whatever on this case.

Mr. Hursh: Mr. Jacoby has been in the jewelry business for many, many years. He can immediately look at a piece of jewelry and determine the quality of it, and the quality of the product and the reptuation of the product is a very important part of this case. Will you answer the question, Mr. Jacoby?

A. Well, there is absolutely no comparison, the Granat Bros. merchandise is so superior to what these people showed me.

Plaintiff's Exhibit J 3—(Continued)
(Deposition of Moritz Jacoby.)

Mr. Naylor: Who do you mean by "these people?"

A. Mayer.

Mr. Naylor: I move "these people" be stricken unless——

A. Mayer Bros.; Seattle, Washington.

Mr. Hursh: No further direct examination.

Cross-Examination

By Mr. Naylor:

Q. Has it been your practice in advertising Wed-Lok rings to advise the public that the rings bearing that name lock together?

A. Yes, "two rings that lock as one—an exciting new discovery—Wed-Lok."

Q. Now you are referring to what? [34]

A. To Wed-Lok rings.

Q. What is that? Exhibit No. 4?

A. Well, it is the first one I picked up. You see here the heading is "Wed-Lok Wedding and Engagement rings that lock as one."

Q. What is the significance of the word "Lock" as you intended it in that advertisement?

A. That they lock together, snap together.

Q. Lock together by some mechanical means?

A. Yes, sure; they have to.

Q. What was the mechanical means, Mr. Jacoby?

A. They snap together, a couple of snaps.

Q. I am speaking at the time of Exhibit 4.

Plaintiff's Exhibit J 3—(Continued)
(Deposition of Moritz Jacoby.)

A. That is right. Here it shows their picture. It shows right here. It says: "To lock align rings at top. Press gently until they click together, become as one."

Q. Now what form of lock was used in the ring advertised in Plaintiff's Exhibit 4?

A. Wed-Lok.

Q. No, what kind of lock? Just describe for us the nature and character of the locking mechanism?

A. Well, it is made male and female. The wedding ring has a little knob, as I would term it. That is on the wedding ring, and the wedding ring fits into the diamond ring, which has two holes at each side that these knobs fit right into. [35]

Q. It is a snap fastener, in other words, isn't it?

A. Yes, that is what we call it.

Q. It is a snap fastener such as you find on key containers?

A. Oh, no, no. It is made entirely different than that.

Q. What is the difference?

A. Well, one is a big, bulky thing, and the other is—this is built in a little post like—

Q. There is a difference in size, then?

A. Well, no, not in size; in construction entirely.

Q. Is that the device that is being used in Wed-Lok rings today?

Plaintiff's Exhibit J 3—(Continued)

(Deposition of Moritz Jacoby.)

A. They have two styles out.

Q. What are they?

A. Well, one that dovetails together, and the one that snaps together.

Q. Will you tell us about the dovetail connection?

A. The one that slips into a little slot.

Q. One ring is slotted and the other one has a protuberance on it? A. Yes.

Q. The protuberance drops in the slot to prevent the rotative disengagement of the wedding ring and engagement ring? A. Yes.

Q. And the snap type is the second type of which you spoke; is that right? [36]

A. Yes. Incidentally, I might add that we haven't had any of the ones that dovetail together as yet. We have got them on order.

Q. What do you mean?

A. We saw the samples of them.

Q. Since the War, you mean? A. Yes.

Q. Since the War?

A. Yes, I saw samples.

Q. For what period of time have you been unable to get the dovetail connection?

A. Quite some time.

Q. How far back does it go?

A. '41 or '42.

Q. Up to date? A. Yes.

Q. But you have seen samples of them?

Plaintiff's Exhibit J 3—(Continued)

(Deposition of Moritz Jacoby.)

A. Oh, yes.

Q. And in the meantime, since the approximate date of Plaintiff's Exhibit 4, you have been handling Wed-Lok rings utilizing a snap fastener mechanism alone? A. Right.

Q. Is that right? A. Yes.

Q. Now, is there any identification in Exhibit 4 of the manufacturer [37] of Wed-Lok rings?

A. No. It doesn't say who they are manufactured by.

Q. Will you take a look at the next exhibit, 5, and state whether or not the manufacturer is identified in that ring? A. No.

Q. Will you read the flash line on that ad. That would be the top three lines?

A. "It's like magic. Two rings join together, become as one. Wed-Lok at Jacoby." Is that what you mean?

Q. Yes. Now look at Exhibit 4 again, please.

A. You see, we have a little star here in Exhibit 5. It hasn't got the manufacturer's name; it is a little asterisk here which shows: "Wed-Lok rings are protected by U. S. patents issued and pending."

Q. And nothing said about Granat Bros. in there, is there?

A. No. In none of our ads do we use the word "Granat" because we use their product, and they are patented and we feel that we don't need to use their name.

Plaintiff's Exhibit J 3—(Continued)

(Deposition of Moritz Jacoby.)

Q. You don't tell the public that Granat Bros. make the rings?

A. Inside we do lots of times use the name.

Q. But not in your ads; not in your published ads?

A. No.

Q. Have you ever done it?

A. Well, possibly have in years gone by.

Q. You can't put your finger on it, however?

A. Right today, no, unless I can get some of my old records.

Q. Will you now take a look at Exhibit 11 and state whether or not you see in that ad the expression "They lock together"?

A. Yes.

Q. Where does it appear?

A. "They lock together when worn together." And underneath—here it says: "To lock, align rings at top. Press gently until they click together and become as one."

Q. In what sense are you using the word "lock" in that ad?

A. To lock the rings together.

Q. That is telling people how they go together, isn't it?

A. Yes; that the design—it locks together, this particular design of ring.

Q. Will you examine 15 and state whether or not you see the expression "lock together" in that ad?

A. Yes, "Two rings become one; Wed-Lok rings that actually lock together."

Plaintiff's Exhibit J 3—(Continued)
(Deposition of Moritz Jacoby.)

Q. So you used the word "l-o-c-k" in that ad?

A. No, "l-o-k" we used.

Q. I beg your pardon—"That actually l-o-c-k together."

A. Yes, "That actually l-o-c-k together."

Q. You used the "l-o-c-k" there in what sense?

A. Describing the Wed-Lok ring.

Q. Will you now examine Exhibit 18. Will you read the caption of that ad? [39]

A. "To become one in Wed-Lok."

Q. What is the significance of that phrase as you intended it in that ad?

A. The two rings become one. It says: "Wed-Lok wedding ensembles lock securely together. They may be worn separately whenever you choose. No unsightly bands or soldering mars their artistic beauty."

Q. Now, will you examine 23, please. Will you read the caption of that ad?

A. Well, there is two captions. "These are the rings that Wed-Lok together."

Q. In what sense were you using that phrase?

A. The two rings become as one.

Q. That means that they lock together?

A. Yes.

Q. Prior to the War did you receive from Granat Bros. engagement and wedding ring ensembles that were engaged together by a dovetailing connection?

Plaintiff's Exhibit J 3—(Continued)
(Deposition of Moritz Jacoby.)

A. We had Wed-Loks. I can't just recall how they operated.

Q. They didn't have a snap fastener?

A. No, they didn't have this same principle as this one; no.

Q. You mean the current one? A. Yes.

Q. That is what you are referring to?

A. Yes. [40]

Q. Do you recall what sort of mechanical contact or connection they had?

A. We had some that dovetailed.

Q. Prior to the war? A. Oh, yes.

Q. Now, one further ad. Will you please examine No. 28. What is meant by the expression in that ad, "No other rings can make this claim"?

A. Just what it says.

Q. Can make a claim of rings locking together?

A. Yes.

Mr. Hursh: Will you read the caption of that ad appearing in heavy print, please.

A. "It is impossible ever for rings to bother you by constantly twisting and turning—Wed-Lok ensembles by Jacoby."

Q. (By Mr. Naylor): Now, start with "No other rings," and read that part of the ad.

A. "No other rings can make this claim, for no other rings but Wed-Lok has the secret and hidden lock. Jacoby presents this famous patented ring device mounted with perfect diamonds, glorious with side diamonds—crafted of precious met-

Plaintiff's Exhibit J 3—(Continued)
(Deposition of Moritz Jacoby.)

als. And the cost for such luxury is so little—for at Jacoby, where value is yours exclusively, Wed-Lok rings cost no more than ordinary wedding ensembles.”

Q. To what were you referring there? Rings manufactured by [41] Granat?

A. Well, these are all Granat Bros. rings.

Q. You don't mention Granat in the ad, do you? A. Oh, no.

Q. Did you write the copy for that ad or did your advertising man?

A. Our advertising man under our supervision. And those are partly gotten from Granat Bros. We take a service from them, and that is where he gets his ideas from.

Q. Actually, you took them from Joe Weinroth, didn't you, of the Granat Manufacturing Company?

A. No, they come directly from Granat Bros.

Q. Directly from Granat Bros.? A. Yes.

Q. What did they do? Supply you with mats?

A. If we want them, yes. They supply us with photographs, and we get all their ads. They have a service; they send us original copies of all their ads direct from Granat Bros.

Q. Then you use those in your advertising campaign here? A. Oh, yes. We cut them up.

Q. By “cut them up” you mean——

A. We rearrange **them**.

Plaintiff's Exhibit J 3—(Continued)
(Deposition of Moritz Jacoby.)

Q. Rearrange them to suit your own desires?

A. Sure.

Q. You change the copy to suit your own desires? [42]

A. If the copy don't suit us. But these ads, 90 per cent of the wording is taken directly from Granat Bros. ads in all these Wed-Loks.

Q. Now, I think you mentioned that during the war years Granat Bros. were not making Wed-Loks. Is that your testimony?

A. Yes. Pardon me—as far as I know. At least, they might have been making them but we were unable to purchase any from them. At least I was not able to purchase any from them. Whether they were making them or not I can't tell.

Q. Did you send any orders in?

A. There was no orders. I used to go down and buy what I could. They were not accepting orders.

Q. In any event, you were not able to place an order and receive the goods?

A. I wasn't able to order anything from them. I used to go down and get what I could from them, or they sent me whatever they had whether I ordered it or not.

Mr. Hursh: Did that same condition apply to other merchandise?

A. Oh, yes. That didn't alone apply to them. We would take what they had.

Plaintiff's Exhibit J 3—(Continued)
(Deposition of Moritz Jacoby.)

Mr. Naylor: Your last purchase prior to the war, Mr. Jacoby, according to Exhibit 52, was November 11, 1941. I take it that the next one coincided approximately with Exhibit 4 in May of 1947? [43]

A. I didn't quite get you.

(Last question read.)

A. Yes, that might have been purchased in '41 or '40. We mounted it and put it in stock. We put a lot of things to one side. It could have been purchased in '41. It all depends. It may have been purchased six months before we used it.

Q. Will you please examine Exhibit 39 in your Diamond Register, and state what is entered opposite 8103 as the identification of the merchandise?

A. This is "Wed-Lok Interlock."

Q. What is the significance of that?

A. Well, we used the word "Interlock" sometimes in describing it, "Interlock" or "Wed-Lok." This is the only order we used "Interlock." The rest are all "Wed-Lok." I don't know how that happened to be in here "Interlock."

Q. But what is the significance of "Interlock" as you used it?

A. That was just something to describe it to us. They had used two or three different types of Wed-Loks—designs, I should say. The principle was the same. We described some of them as "Interlocks" so we could distinguish one design from another. That was done for our convenience.

Plaintiff's Exhibit J 3—(Continued)
(Deposition of Moritz Jacoby.)

Q. Were they design names?

A. They called them all Wed-Loks.

Q. No, I mean didn't you use that expression "Interlock" as a design name?

A. No, to describe it to ourselves in the store so we knew which [44] particular ring it meant at that time.

Q. Did you have other rings at that time?

A. Other rings?

Q. Other than Interlock?

A. Oh, yes. They sold all kinds of rings.

Q. I am speaking of rings under the trade-mark "Wed-Lok."

A. They had different designs, yes. They had several designs.

Q. Did they give a different name to each design?

A. Oh, no. We even called them in here "Wed-Lok" or "New Wed-Lok." You see, as time went on they changed the design and style, so that we have our own reference to tell which one that was. Just like they have got numbers now. They work under numbers. At that time they called everything "Wed-Lok." We had to distinguish what we wanted when we wanted to re-order something there.

Q. During the war years was there a trend to a narrower combination of wedding and engagement rings?

A. You mean from the selling feature?

Q. Yes.

Plaintiff's Exhibit J 3—(Continued)

(Deposition of Moritz Jacoby.)

A. No more than before. We sold a lot of narrow rings. I mean we sold a lot of wide rings.

Q. Was there a definite trend commencing in '41 to a narrower ring?

A. Oh, no. We had narrow rings long before that. As far as narrow rings, we had them long before that. [45]

Q. I take it from what has developed here this morning that you did not advertise Wed-Lok in the period 1941 to 1947, did you?

A. When we didn't have them we didn't, no.

Q. You didn't have them?

A. No. We destroyed our records, and we were trying to check on that. We might get them from our advertising counsellor.

Q. But you don't remember any at this moment?

A. I can't give you exact dates. You know what I mean; I know we used it, but it is useless for me to tell you unless I can lay my finger on it.

Q. I am speaking from 1941 to May of 1947; in other words, prior to Exhibit 4.

A. What year was the war?

Q. Exhibit 4 was June the 4th, 1947. Do you know of any advertisement between that date and, say, January 1st, 1941?

A. I couldn't offhand say unless I check all our ads.

Q. Well, you know from your records that you did not have any merchandise on hand, don't you?

Plaintiff's Exhibit J 3—(Continued)
(Deposition of Moritz Jacoby.)

A. Well, we had it in stock. We didn't sell everything out right away, you know. Those are the dates that we put it in stock, but that doesn't show the dates it was sold.

Q. All right. As of the last purchase in 1941—what was the last purchase, by the way?

A. What was the last purchase?

Q. Yes, in 1941. [46]

A. That is asking me something I can't recall offhand.

Q. November 11, 1941, Exhibit 52?

A. That was put in stock on November 11, 1941.

Q. Is that 9810? A. 9810.

Q. How many ensembles?

A. Now pardon me. This particular one was sold in '42, this particular ensemble. A year after, exactly; it was put in stock October 10th, 1941, and it was sold September 11th, 1942.

Q. That was one ensemble?

A. That particular ensemble, yes.

Q. Take a look at 51, No. 9081, purchased December 9th, 1939, and tell us the quantity that was involved there.

A. These are all ones, every one of these. There is only one. Each ring has its own individual number. We don't enter more than one to any number.

Q. All the numbers you have given, then, represent but one ensemble? A. That is correct.

Plaintiff's Exhibit J 3—(Continued)

(Deposition of Moritz Jacoby.)

Q. In other words, none of these numbers would refer to a half a dozen ensembles? A. No.

Q. Or any quantity over one?

A. That is correct. That is why each one has its individual number. [47]

Q. So that between May 10th, 1937 and November 11th, 1941, the total number of Wed-Lok ensembles handled by you amounted to 27. Is that approximately right?

A. Whatever that counts up to. I don't know.

Q. It is substantially less than fifty, anyway, is it not?

A. I mean I would have to count.

Q. Are you acquainted with your neighbors down the street? A. Am I acquainted with them?

Q. Yes. A. Oh, yes; sure.

Q. I am speaking of the folks, of course, who run Dan Marx & Company at 511 Southwest Broadway, Portland, Oregon. Are you acquainted with Mr. Block? A. Yes.

Q. Mr. Renne Block, is it? A. Yes.

Q. And that store is situated how far from your place of business?

A. Oh, maybe a couple of hundred feet—it couldn't be a couple hundred feet. It is only about one hundred feet or maybe one hundred fifty feet.

Q. Has it ever come to your attention that he is advertising the Feature Lock wedding ring ensemble?

Plaintiff's Exhibit J 3—(Continued)
(Deposition of Moritz Jacoby.)

A. I can't help but see the ads in the paper.

Q. I show you a page, page 16, of the Sunday Oregonian for February 6th, 1949, and ask you if you happened to see that [48] particular ad.

A. Yes, I saw that yesterday. Yes, I saw yesterday's Oregonian.

Q. Have you seen other similar ads inserted by Dan Marx & Company? A. Oh, yes.

Q. With the Feature Lock? A. Oh, yes.

Q. And aside from the name of the concern, Dan Marx & Company, will you state what are the most prominent words in the ad as you see it?

A. It is this "Feature Lock." "They lock together."

Mr. Naylor: I will offer that as Defendant's Exhibit A on this deposition, with the stipulation that a photostatic copy may be substituted.

Mr. Hursh: Yes.

(The advertisement referred to, dated February 6, 1949, was thereupon marked as Defendant's Exhibit A, and a photostatic copy thereof is made a part of this deposition.)

Mr. Naylor: I understood you to say that 90 per cent of your stock is Granat Bros. merchandise, Mr. Jacoby? A. What they make, yes.

Q. You are a pretty good customer of theirs, then? A. Oh, sure.

Q. Has that always been true? [49] A. Yes.

Plaintiff's Exhibit J 3—(Continued)
(Deposition of Moritz Jacoby.)

Q. Are you their largest customer in Portland, Oregon, would you say?

A. I can't answer. They have got another account. I haven't any idea what he buys.

Q. Are you longer in point of time than the other customer?

A. I can't recall that, either. They have been in business many years.

Q. Who is that other customer?

A. Roy Molin.

Q. In the business prior to the war how were the Granat Bros. Wed-Lok rings identified when they came into your hands?

A. From the style; from the design.

Q. No, I mean how were they identified with the words "Wed-Lok"? Were the words "Wed-Lok" applied to them in any way?

A. Why, sure. They sold them as Wed-Lok.

Q. Was the term visibly applied to the rings or to the boxes?

A. I don't know anything about the boxes. It was applied to the rings.

Q. Where?

A. How do you mean, where?

Q. In the ring or on the ring?

A. You mean in the ring?

Q. Yes.

A. I can't remember that it was stamped Wed-Lok inside or not. [50]

Plaintiff's Exhibit J 3—(Continued)
(Deposition of Moritz Jacoby.)

Q. You can't recall?

A. I can't recall that.

Q. What is the practice today?

A. I can't even tell you that offhand, whether they are stamped "Wed-Lok." They have a patent number inside today, I think. I don't know whether they have—have they the word "Wed-Lok" stamped inside? I mean I don't know whether they are stamped "Wed-Lok." I never looked in them myself. I can get one and look at it if you want to know. Do you know whether they are stamped?

Q. No. I just wanted to know what your recollection was.

A. They have a serial number and a patent number on the inside, I think.

Mr. Naylor: I think that is all.

Redirect Examination

By Mr. Hursh:

Q. Can you tell us, Mr. Jacoby, why you purchase the quantity of Granat Bros. products that you do purchase here in your store?

A. Yes. We had used other lines prior to that, and I have shopped in the East and West and all over, and I found out they have got the finest line that I can buy, and that is what we build our business on, is fine quality merchandise.

Q. In other words, that is why you buy Granat Bros. products? A. Yes, naturally. [51]

Plaintiff's Exhibit J 3—(Continued)

(Deposition of Moritz Jacoby.)

Q. When the trade-mark "Wed-Lok" is used in connection with the Granat Bros. ring ensembles, to you does that describe the entire ring ensemble or does it describe just one particular feature of that ring ensemble?

A. The mechanism; the mechanical part.

Mr. Hursh: That is all.

Mr. Naylor: That is all.

Mr. Hursh: We have stipulated it will be unnecessary for you to read and sign your deposition. Do you also waive the right to read and sign your deposition?

The Witness: Yes.

(Witness excused.)

(Reading and signature waived.)

United States of America,
State of Oregon,
County of Multnomah—ss.:

I, the undersigned, a Notary Public for Oregon, residing at Portland, Multnomah County, do hereby certify that on Monday, February 7, 1949, before me as such Notary, at 529 Southwest Broadway, Portland, Oregon, personally appeared, pursuant to Notice of Taking Depositions and the oral stipulation herein before set forth, Moritz Jacoby, a witness in behalf of the plaintiff herein; that Mr. Jack E. Hursh, of attorneys for the plaintiff, appeared

Plaintiff's Exhibit J 3—(Continued)

in its behalf, and Mr. James M. Naylor, of attorneys for the defendants, appeared in their behalf; and the said witness being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, and being carefully examined, in answer to oral interrogatories propounded by the attorneys above named on direct and cross-examination testified as in the foregoing annexed deposition, pages 1 to 52, both inclusive, set forth.

I further certify that all interrogatories propounded to said witness, together with the answers of said witness thereto, and all objections and motions taken or made, and other proceedings occurring upon the taking of said deposition, were then and there taken down by me in shorthand and thereafter reduced to typewriting, and that the foregoing transcript, pages 1 to 52, both inclusive, constitutes a full, true and accurate transcript of said deposition and proceedings, so taken by me in shorthand as aforesaid; and that the submission of said deposition, when transcribed, to the witness for examination and reading to or by him and opportunity to the witness to make any changes in form or substance and the signing of same by the witness were waived; and that said deposition has been retained by me for the purpose of sealing up and filing with the Clerk of the above-entitled court, as required by law.

I further certify that the photostatic copies of

Plaintiff's Exhibit J 3—(Continued)

documents annexed hereto, numbered "1" to "52," both inclusive, are photostatic copies of the identical documents so marked as exhibits in behalf of the plaintiff upon the taking of said deposition.

I further certify that I am not a relative or employee or attorney or counsel for any of the parties, or a relative or employee of such attorney or counsel, or financially interested in the said action.

In Witness Whereof, I have hereunto set my hand and notarial seal this 10th day of February, 1949.

[Seal]: /s/ JOHN S. BECKWITH,

Notary Public for Oregon, residing at Portland,
Multnomah County, Oregon.

My commission expires May 31, 1950.

[Endorsed]: Filed Mar. 16, 1949.

[Title of District Court and Causes.]

PLAINTIFF'S EXHIBIT K3

Be It Remembered That, pursuant to the Notice of Taking Depositions attached to the deposition of Moritz Jacoby and filed with said deposition, a copy of which notice is hereto annexed, and the further oral stipulation of counsel appearing in behalf of the respective parties hereinafter set forth, the deposition of Holly G. Jackson was taken in behalf of the plaintiff in the above-entitled actions on Monday, February 7, 1949, beginning at the hour of 2:00 o'clock p.m., at 225 North Liberty Street, Salem, Oregon, before John S. Beckwith, a Notary Public for Oregon, residing at Portland, Multnomah County, Oregon.

Appearances:

MR. JACK E. HURSH,

Appearing for Messrs. Mellin and Hanscom,
391 Sutter Street,
San Francisco, California,
Attorneys for the plaintiff.

MR. JAMES M. NAYLOR,

Appearing for John Vaughan Groner,
Russ Building,
San Francisco, California,
of Attorneys for the defendants.

(At said time and place the following stipulation was entered into between counsel present in behalf of the respective parties:)

Plaintiff's Exhibit K3—(Continued)

It is stipulated and agreed by and between the attorneys for the respective parties in the above-entitled actions, that the deposition of Holly G. Jackson may be taken on behalf of the plaintiff in the above-entitled actions, [2*] at 225 North Liberty Street, Salem, Oregon, at the hour of 2:00 o'clock p.m., before John S. Beckwith, a Notary Public for Oregon, and in shorthand by the said John S. Beckwith.

It is further stipulated that said deposition, when fully transcribed, may be used on the trial of the actions above mentioned as by law provided; that all objections as to the form of the questions are waived unless made at the time the questions are asked, and that all objections as to the materiality, relevancy and competency of the questions or answers are reserved to the parties until the time of trial.

It is further stipulated that the submission of the deposition, when fully transcribed, to the witness for examination and reading to or by him and opportunity to the witness to make any changes in form or substance and the signing of same by the witness are hereby expressly waived.

Mr. Hursh: Will you stipulate that Mr. Beckwith, in accordance with the Oregon statute, is authorized to administer oaths throughout the State of Oregon?

Mr. Naylor: He is an Oregon notary. [3]

* Page numbering appearing at top of page of original Reporter's Transcript.

HOLLY G. JACKSON

was thereupon produced as a witness in behalf of the plaintiff and, having been first duly sworn by the Notary, was examined and testified as follows:

Direct Examination

By Mr. Hursh:

Q. Will you state your name, please.

A. Holly G. Jackson.

Q. What is your residence?

A. 3490 Donald Way.

Q. That is in Salem, Oregon? A. Yes.

Q. What is your occupation?

A. I am a jeweler.

Q. Over what period of time have you been engaged as a jeweler?

A. Now you are going to get technical. It is about 27 years.

Q. Do you know of a company by the name of Granat Bros.? A. I do, sir.

Q. What type of product do they manufacture and sell?

A. Well, rings, watch cases, and a few bracelets, I guess.

Q. Do you know where that company is located?

A. San Francisco.

Q. How long have you known of Granat Bros.?

A. Oh, all of 20 years, I would say.

Q. Have you ever heard of a wedding ring-engagement ring [4] ensemble that is sold under the trade-mark "Wed-Lok"?

Plaintiff's Exhibit K3—(Continued)

(Deposition of Holly G. Jackson.)

A. I sell them. I guess I should.

Q. Do you know who manufactures the Wed-Lok ring ensemble? A. Granat Bros.

Q. And over what period of time have you known of the wedding ring-engagement ring ensemble that has been sold under the trade-mark "Wed-Lok"? A. Well, about five years.

Q. You say you sell those rings in your store here? A. I do, sir.

Q. When you see or hear the word "lock," either spelled l-o-k or l-o-c-k as part of a trade-mark for wedding-ring and engagement ring ensembles, whose product do you identify that word with?

Mr. Naylor: Just a moment. Will you repeat that question?

(Last question read.)

Mr. Naylor: That question is objected to for the reason that it pertains to something that is not in issue in this case, there being no claim to the word "l-o-c-k" or the word "l-o-k" per se.

Mr. Hursh: Go ahead and answer the question.

A. Well, I naturally connected it with Granat Bros. inasmuch as I sell them. And up until the last six months I never knew there was any other kind of a locking ring.

Q. Are you familiar with the trade-mark "Feature Lock" used [5] on ring ensembles?

A. I am, sir.

Plaintiff's Exhibit K3—(Continued)
(Deposition of Holly G. Jackson.)

Q. To what particular type products is this trade-mark "Feature Lock" applied?

A. I don't just quite get the question.

Q. What jewelry is the trade-mark "Feature Lock" identified with?

A. It is rings, wedding rings and diamond rings.

Q. Engagement rings, too?

A. That is right.

Q. What was the first impression that came to your mind when you first heard or saw the trade-mark "Feature Lock" in connection with a wedding ring-engagement ring ensemble?

Mr. Naylor: Just a moment. That question is objected to as calling for the opinion and conclusion of this witness.

Mr. Hursh: Go ahead and answer the question.

A. Well, I thought it was another Granat ring. That is what I thought.

Q. When did you first hear of this ensemble known as the Feature Lock ensemble?

A. Oh, some six months ago, I imagine, was the first I heard of it.

Q. At the time you first heard of it were you confused as to whose product was identified?

Mr. Naylor: Same objection. [6]

A. Well, as I stated before, I thought it was a Granat ring inasmuch as Granat make a threesome. They make a threesome ring which fits into the Wed-Lok picture itself.

Plaintiff's Exhibit K3—(Continued)

(Deposition of Holly G. Jackson.)

Q. What products of Granat Bros. do you sell here in your store?

A. Well, I sell their complete line.

Q. You mean their ring line?

A. Complete ring line. I do not sell any of their cases. I sell their ring line, their Wed-Lok line. As a matter of fact, I try to stock all of their numbers in rings.

Q. Have you ever advertised your sale of this Wed-Lok wedding ring-engagement ring ensemble?

A. I have it on the air and in the paper too.

Q. How often do you advertise it, for example, on the radio?

A. Well, that is something I just—probably two or three times a month. I will have it on a week at a time.

Q. You mean you will mention the Wed-Lok ring ensemble in your radio program say for a week at a time every day during that week?

A. That is right; for a week at a time. I try to instill it into the public's mind, and then I will turn around and I will run watches a week. That is the way I will do it.

Q. How often do you run newspaper ads advertising the Wed-Lok ensemble?

A. Well, I would have to check that. I have a column in the [7] paper and I mention Wed-Lok, I mention my watch line, and I run them in together. How often I run Wed-Lok—I would have

Plaintiff's Exhibit K3—(Continued)

(Deposition of Holly G. Jackson.)

to check on it. I am not in a position to say at this time.

Q. Do you run any ads in the newspaper advertising Wed-Lok exclusively?

A. I do; yes, sir.

Q. How often do you run those ads?

A. Oh, probably once a month. I am not sure. I would have to check on that.

Q. How long have you been advertising in this manner?

A. Well, it will be just about five years now. It will be four and a half years, is what it is, to be exact. But I haven't had the Granat line. I have run these ads and this column, all right. I have been writing them now for about four and a half years.

Q. How long have you been advertising Wed-Lok ring ensembles in your column and on the radio and in special newspaper ads featuring the Wed-Lok ensemble?

A. Since I have taken on the Granat line, which has been about a year.

Q. You have just taken on the Granat line about a year ago? A. That is right, sir.

Q. How long have you been in business here in Salem for yourself? [8]

A. It will be five years the first of August.

Q. Can you explain why you did not advertise Wed-Lok prior to a year ago?

Plaintiff's Exhibit K3—(Continued)

(Deposition of Holly G. Jackson.)

A. Well, the main reason, I didn't have the line.

Q. Did you attempt to get the line?

A. I wanted the line, but it was not available when I opened my store.

Q. During the past year approximately how many Wed-Lok ring ensembles would you say you have sold in your store?

A. Well, I can't state that. I have an idea about it in regard to percentage of my business, how much I sell. It will probably run around 20 per cent of my diamond business, roughly.

Q. In other words, if I get your answer correctly, about 20 per cent of all diamond rings that you sell in this store is of the Wed-Lok ensemble type?

A. The Threesome and the Wed-Lok combined.

Q. You mention this Wed-Lok Threesome. What does that set comprise? A. Please?

Q. What does the Wed-Lok Threesome set comprise? What is that particular set?

A. That comprises the Wed-Lok diamond engagement ring, wedding ring, plus a man's wedding ring to match.

Q. What is the man's wedding ring known as? What trade-mark [9] is that sold under?

A. Threesome. That is sold under the Threesome. That makes up the Threesome.

Q. I see. Is there any other trade-mark con-

Plaintiff's Exhibit K3—(Continued)

(Deposition of Holly G. Jackson.)

nected with that particular man's ring? Is it known as the Wed-Lok Threesome, for example?

A. That is right. It is the Wed-Lok Threesome.

Q. Do you consider the word "Lok" to be a valuable part of the trade-mark "Wed-Lok" which you employ on these ring ensembles?

Mr. Naylor: That question is objected to as pertaining to something that is beyond the issues in this case, since there is no assertion of the right to use the word "lock," no matter how you spell it; further, calling for the mere opinion of this witness.

Mr. Hursh: Go ahead and answer the question, Mr. Jackson.

The Witness: What was the question?

(Last question read.)

A. Well, I personally do. We are getting more calls for it every day. It stands to reason it has a certain bearing. I think it definitely has a place in our business.

Q. Do customers come into your store and ask for Wed-Lok ring ensembles by that name?

Mr. Naylor: What name?

Mr. Hursh: Wed-Lok. [10]

A. They do. As a matter of fact, I had two of them Saturday here.

Q. And did you sell them Wed-Lok ring ensembles in answer to their request for Wed-Lok ensembles?

Plaintiff's Exhibit K3—(Continued)

(Deposition of Holly G. Jackson.)

A. I did sell them, anyway. That is right.

Q. Do people come in very often and ask for ring ensembles under the trade-mark "Wed-Lok"?

A. We are getting queries every week on it.

Q. Do you ever have any customers come into your store and ask for lock ring ensembles?

A. Yes, we do.

Q. Does that happen very often?

Mr. Naylor: Same objection; on the ground that the word "lock" has no bearing on any issue in this case, no right being asserted in it per se.

Mr. Hursh: Go ahead and answer the question.

(Last question read.)

A. We are getting more requests all the time.

Q. What quality of merchandise is produced by Granat Bros.?

A. I think they are in a class by themselves. That is my opinion, anyway.

Q. Is this quality that you speak of applicable to Wed-Lok ring ensembles?

A. It is, sir.

Q. Have you ever been offered a Feature Lock ring ensemble? [11]

A. Yes, I have.

Q. Who offered this ensemble to you?

A. Well, through a jobbing house. I just couldn't tell you right at this time.

Q. Do you know what jobbing house it was?

Plaintiff's Exhibit K3—(Continued)

(Deposition of Holly G. Jackson.)

A. I think it was M. Schussler in San Francisco.

Q. Did you ever see the Feature Lock ring ensemble?
A. I have, sir.

Q. And what is the quality of the Feature Ring ensemble as compared to the Granat Bros. Wed-Lok ensemble?

Mr. Naylor: That is objected to as calling for the opinion and conclusion of this witness, having no bearing on the issues of the case.

Mr. Hursh: The witness is one that has been in the jewelry business for many years and is certainly capable of determining the quality of jewelry, and it is a proper question to ask of the witness.

A. Well, I bought two or three of these sets so I could have them as a comparison.

Q. You have them still here in your store?

A. I have them still here, and I show them.

Q. What would you say as to the actual comparison of these Feature Lock ring ensembles as compared with the Wed-Lok ring ensembles? [12]

Mr. Naylor: Same objection.

A. Well, to me the Feature Lock looks like just a bunch of old rings that we have had for years equipped with this lock inserted into it. And as far as the style, why, I think they are about ten years behind the times. That is my own personal opinion.

Mr. Hursh: No further direct examination.

Plaintiff's Exhibit K3—(Continued)
(Deposition of Holly G. Jackson.)

Cross-Examination

By Mr. Naylor:

Q. How were the Feature Locks that you purchased for comparison purposes marked, Mr. Jackson?

A. I would not be able to answer that. I would have to get one and look at it.

Q. Will you get one, please?

A. Yes. (Examine ring.) This has "14 carat, Pat. F. L." in it.

Q. Am I correct in my understanding that you took that out of your window, your display window, facing on Liberty Street? A. Yes, I did, sir.

Q. In what sort of a display stand was that ring, please? A. Just in a plain little box.

Q. With no mark? A. No mark.

Q. Do you have any Wed-Lok rings on display in that same window? [13]

A. I imagine I have.

Q. At this time? A. I imagine I have.

Q. Is there any visible sign held forth to the public as to the brand "Wed-Lok" in connection with the display of those rings?

A. Shall I go and look?

Q. Yes, please.

A. (The witness inspected his display case.) I have my Wed-Lok Threesomes in there.

Q. What is the nature of the display case?

Plaintiff's Exhibit K3—(Continued)
(Deposition of Holly G. Jackson.)

A. A box.

Mr. Hursh: Make a note in the record that we have just examined the window and find that there are two Threesome ring ensembles in the window that are encased in a box showing the trade-mark "Wed-Lok." Mr. Jackson, does that have "Wed-Lok Threesome" on there? A. That is right.

Mr. Hursh: Wed-Lok Threesome.

Mr. Naylor: Let the record also show that there are approximately forty other boxes or more in that window with the words "Art Carved" featured on a substantial number of them.

Q. Mr. Jackson, to clarify the statement by counsel, can you state why there are only two boxes of Wed-Lok ensembles? [14]

A. That is a point I was going to bring up. I probably have as many Wed-Lok sets in my window—let's put it this way: I probably have fifteen more sets which I don't have boxes available for. They are bringing out a new box and I don't have it. I had to put them in my own boxes.

Mr. Hursh: So, as a matter of fact, there are approximately seventeen sets of Wed-Lok rings in your window and on display today?

A. I would say that.

Q. (By Mr. Naylor): And only two of them marked?

A. That is right. The rings are all marked but they are not in a box.

Plaintiff's Exhibit K3—(Continued)

(Deposition of Holly G. Jackson.)

Q. I mean a marked box. A. That is right.

Q. That is, marked so that the public could read it as they pass your window?

A. That is right.

Q. How many sets would you say had been purchased by you; that is, sets of Wed-Lok, in the year in which you have handled the Granat Bros. line?

A. I haven't made a check of that, sir. I wouldn't know.

Q. Could you give a rough estimate or could you make a check conveniently?

A. No, I couldn't.

Q. Could you tell us in round numbers what the set number [15] would be?

A. Well, I know how many dollars worth of Granat rings we sold, but I couldn't tell you how many of them were Wed-Loks. I will frankly say that.

Q. You say you have seventeen sets of Wed-Loks on hand at this time? A. Right close to it.

Q. Would you say you had sold 75 in the year that you have handled that particular line? I am speaking now of Wed-Loks specifically?

A. No, I wouldn't say that.

Q. Would you say 50?

A. That would be about one a week. I imagine I have, yes.

Q. In the neighborhood of 50?

A. I imagine I have, yes.

Plaintiff's Exhibit K3—(Continued)
(Deposition of Holly G. Jackson.)

Q. Now, earlier in your testimony you mentioned that you had heard of Granat Bros. Wed-Lok for about five years? A. That is right, sir.

Q. How did it first come to your attention?

A. Well, I had friends that have had the line to start with, and I had opened up my store, and naturally I was looking for something to sell.

Q. When did you open the store?

A. It will be five years the first of August.

Q. Did you have any contact with Granat Bros. at the time or [16] about the time you opened this store concerning their merchandise?

A. Not at the time, but some few months later. I don't know just what time it was.

Q. Would that have been about four and a half years ago? A. It wasn't quite that long ago.

Q. Do you know whether or not Granat Bros. were making Wed-Lok rings four and a half years ago? A. I do, sir.

Q. What is your understanding about that? That they were or were not making rings?

A. They were making them.

Q. They were? A. Yes.

Q. How do you know that?

A. Well, I have been in the business 27 years, and I always more or less hoped when I had a store of my own that I would handle Granat rings. I happen to like Granat rings.

Q. Did you make any effort four and a half

Plaintiff's Exhibit K3—(Continued)

(Deposition of Holly G. Jackson.)

years ago to procure Wed-Lok rings from Granat Bros.?

A. Well, I understood at that time they were not available.

Q. Then they were not making them, were they?

A. I couldn't say that. A lot of our rings were not made because of a shortage of men and material; like you could not get platinum, for one thing. A lot of rings were discontinued [17] during the war because they could not make a ring of the quality, for instance, that they wanted, and rather than make them they discontinued it during the war, like some of our silver patterns.

Q. It is a fact that Granat discontinued from 1941 to May of 1947, isn't it?

Mr. Hursh: Wait a minute. I object to that question. You are evidently quoting from something. The witness has stated that he didn't know exactly what the situation was with respect to Granat, and he just testified that some things were difficult to get because of the war conditions, and I don't think it is proper cross-examination, and I object to the question as irrelevant, immaterial and incompetent.

Mr. Naylor: Let's put it this way: When were you first able after you opened this store, Mr. Jackson, to procure Wed-Lok rings, thus marked, from Granat Bros.?

A. About a year ago at this time.

Plaintiff's Exhibit K3—(Continued)
(Deposition of Holly G. Jackson.)

Q. That would be, say, February, 1948?

A. I imagine so, yes. I would have to check my records, but I would say about a year.

Q. Did you try to procure them in the year 1947?

A. Please?

Q. Did you try to procure them in the year 1947?

A. I couldn't answer that. I am just not sure.

Q. Were you called on by a Granat Bros. salesman in the year [18] 1947?

A. He was in here. I couldn't tell you the exact date, but he was in here. He called at my store.

Q. During the year 1947?

A. I believe he did; yes, sir.

Q. Were you able to procure from him at that time Wed-Lok ensembles?

A. I understood at that time I couldn't get them.

Q. In 1947?

A. That is right; but as soon as they were available I was going to have them.

Q. As far as you know, they were first available to you in January of 1948?

A. That is right, sir.

Q. Now, coming back to your acquaintanceship with Wed-Lok rings four and a half years ago, how did it come to your attention that Granat Bros. were supposed to have made Wed-Lok rings that far back?

A. Well, I heard of the Wed-Lok ring many times before that, if you want to get technical about it.

Plaintiff's Exhibit K3—(Continued)
(Deposition of Holly G. Jackson.)

Q. How far back?

A. I wouldn't say that. I just don't know how long, but I have heard of them—as a matter of fact, we sold Granat rings when I was with Pomeroy & King.

Q. Where was that? [19]

A. Right here in Salem. We had their mountings.

Q. In Salem?

A. Pomeroy & King. However, they were not Wed-Lok. Understand that.

Q. They were not Wed-Lok? A. No, sir.

Q. Now, speaking specifically of Wed-Lok, how far back can you tell us about that?

A. Well, I can't answer that. I was in the service for two years and during that time, why——

Q. Naturally you were not buying any rings.

A. I wasn't thinking about jewelry. I will say this: I have known of Wed-Lok rings for several years.

Q. What do you mean by several years?

A. Oh, probably six or seven years. I don't know how long they have been making them, but I know I have known about them for many years.

Q. You can't fix the precise time?

A. Please?

Q. You can't fix the precise time for that, can you? In other words, how did they come to your attention?

A. I heard about them before I went in the

Plaintiff's Exhibit K3—(Continued)

(Deposition of Holly G. Jackson.)

service. I will say that. That was in 1942, I think it was.

Q. I think you mentioned that when you first heard of Feature Lock you thought it was another Granat Bros. ring. Was that [20] your testimony?

A. That is right.

Q. What led you to that belief? What was there in the expression "Feature Lock" that led you to think that it was another Granat Bros. ring?

Q. Well, when I heard the word "Lock" all I had ever heard of was Wed-Lok, so naturally I thought it was a Granat ring.

Q. Did you ever hear of J. F. Sturdy's Sons Company of Attleboro Falls, Massachusetts?

A. I guess I haven't.

Q. Has it ever come to your attention that they use the expression "Sta-Lokt"?

A. I have never heard of it.

Q. In connection with cuff buttons, made wholly or in part of precious metal?

A. Never heard of it that I know of.

Q. If you saw the expression "Sta-Lokt" on jewelry would you get the impression that that product also originated with Granat Bros.?

A. Inasmuch as I have never heard of "Lock" before, I might.

Q. Have you ever heard of Untermeyer, Robbins & Company of New York City?

A. I never have, sir.

Plaintiff's Exhibit K3—(Continued)
(Deposition of Holly G. Jackson.)

Q. Has it ever come to your attention that they use the expression "Locked in Love" for finger rings? [21]

A. I have never seen it.

Q. If you were to see the expression "Locked in Love" applied to finger rings would you gain the impression that it was a Granat Bros. product?

A. Can I have anything off the record? Do you have to put this on the record?

Mr. Hursh: Pardon?

The Witness: May I ask a question?

Mr. Hursh: You may ask a question any time for clarification.

Mr. Naylor: Sure; any time, Mr. Jackson.

Mr. Hursh: Any time you don't understand a question you ask to have it clarified.

The Witness: That is what I want to know. You guys get me so full of goose pimples I don't know where I am at.

Mr. Naylor: That is not our purpose here.

The Witness: No, definitely not. I can see that. What was the question again?

(Last question read.)

A. Well, up until here recently, why, I had always been under the impression that any locked ring was a Granat ring, until I got these Feature Locks here.

Q. (By Mr. Naylor): That was because Wed-Lok was the only locking ring that you had personally heard of, wasn't it?

Plaintiff's Exhibit K3—(Continued)
(Deposition of Holly G. Jackson.)

A. That is the only ring I had ever sold in a locking ring. [22]

Q. You hadn't heard of any other lock ring?

A. Please?

Q. You had not heard of any other rings which included the word "Lock" or had a lock feature?

A. I believe they are the first I had heard of. However, I had had customers coming in and asking me about different lock rings, which I didn't know about until this all come up here recently.

Q. Could you give us an example of what they asked for?

A. They were asking for a lock ring. When I would show them these Granat rings they would say, "No, there is one that locks different than this," which I didn't know about at that time.

Q. How long ago was that, Mr. Jackson?

A. Oh, that was about—it is within the last year.

Q. Did they mention the brand name?

A. No, they just didn't know. They just said they locked different than these Granat rings. That is the first that I noticed of it.

Q. Did you ever hear of the Gemex Company?

A. I have, sir.

Q. Of Newark, New Jersey?

A. I don't know what their address is, but I have heard of them.

Q. Has it ever come to your attention that on

Plaintiff's Exhibit K3—(Continued)

(Deposition of Holly G. Jackson.)

their line of [23] jewelry, including finger rings, they have used the expression "Turn-Lok"?

A. I didn't know Gemex made a ring line.

Q. Has it ever come to your attention that the Gemex Company was putting out a line of jewelry, namely, bracelet attachments such as buckles or clasps, with the word "Gem-Lok" applied thereto?

A. I can find out. What do you call that right there (exhibiting tray of watch bands to counsel)?

Q. You have shown me a tray of what appears to be watch bracelets or wrist bands.

A. It doesn't mention any lock on it, does it?

Q. I agree with you that the word "Gem-Lok" does not appear. But what appears is "A Forstner product," and the top one on the left has in combination with the words "The perfect Buckle" "Kwik-Lok."

A. I have sold lots of them. That is the first time I have ever seen that.

Q. If you saw a "Kwik-Lok" line of jewelry would you take it for granted that it came from Granat Bros.?

Mr. Hursh: I object to that question as being indefinite, and you do not specify the particular type of jewelry that you are mentioning, and without asking the character of jewelry that such a trade-mark would be applied to the question is indefinite and unintelligible. [24]

Q. (By Mr. Naylor): With whom do you do

Plaintiff's Exhibit K3—(Continued)
(Deposition of Holly G. Jackson.)

business down there? Granat Bros. or Granat Manufacturing Company?

A. I do business with both of them.

Q. Doesn't Granat Manufacturing Company handle a wholesale line for Granat Bros.?

A. That is right.

Q. And I presume you send your orders to Granat Manufacturing Company?

A. That is right.

Q. Your correspondence is had with whom in Granat Manufacturing Company? Mr. Weinroth?

A. Yes, Mr. Weinroth.

Mr. Naylor: I think that is all.

Redirect Examination

By Mr. Hursh:

Q. Could you estimate how many wedding ring-engagement ring sets you sell a week in your store, the average?

A. That depends on the time of the year.

Q. I mean over the year how many would it average, would you say?

A. Well, let's set it at three a week.

Q. In this Feature Lock ensemble that you have produced, did these diamonds come set in the rings or are these diamonds that you have yourself set in the rings?

A. I bought the mountings and that happens to

Plaintiff's Exhibit K3—(Continued)

(Deposition of Holly G. Jackson.)

be my own [25] stone, center stone, as I remember it. Yes, that is my own center stone.

Mr. Hursh: No further redirect.

Mr. Naylor: No further cross-examination.

Mr. Hursh: Will you stipulate that Mr. Jackson need not sign the deposition?

Mr. Naylor: Yes.

Mr. Hursh: And Mr. Jackson, are you willing to waive the reading and signing of your deposition?

The Witness: I will waive the reading and signing of the deposition.

(Witness excused.)

(Reading and signature waived.)

[Endorsed]: Filed Mar. 16, 1949. [26]

Certificate of Notary

United States of America,

State of Oregon, County of Multnomah—ss.

I, the undersigned, a Notary Public for Oregon, residing at Portland, Multnomah County, do hereby certify that on Monday, February 7, 1949, before me as such Notary, at 225 North Liberty Street, Salem, Oregon, personally appeared, pursuant to Notice of Taking Depositions filed with the deposition of Moritz Jacoby, a copy of which notice is hereto annexed, and the oral stipulations of counsel hereinbefore set forth, Holly G. Jackson, a witness

Plaintiff's Exhibit K3—(Continued)

in behalf of the plaintiff herein; that Mr. Jack E. Hursh, of attorneys for the plaintiff, appeared in its behalf, and Mr. James M. Naylor, of attorneys for the defendants, appeared in their behalf; and the said witness being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, and being carefully examined, in answer to oral interrogatories propounded by the attorneys above named on direct and cross-examination testified as in the foregoing annexed deposition, pages 1 to 26, both inclusive, set forth.

I further certify that all interrogatories propounded to said witness, together with the answers of said witness thereto, and all objections and motions taken or made, and other proceedings occurring upon the taking of said deposition, [27] were then and there taken down by me in shorthand and thereafter reduced to typewriting, and that the foregoing transcript, pages 1 to 26, both inclusive, constitutes a full, true and accurate transcript of said deposition and proceedings, so taken by me in shorthand as aforesaid; and that the submission of said deposition, when transcribed, to the witness for examination and reading to or by him and opportunity to the witness to make any changes in form or substance and the signing of same by the witness were waived; and that said deposition has been retained by me for the purpose of sealing up and directing to the Clerk of the above-entitled court, as required by law.

Plaintiff's Exhibit K3—(Continued)

I further certify that I am not a relative or employee or attorney or counsel for any of the parties, or a relative or employee of such attorney or counsel, or financially interested in the said actions.

In Witness Whereof, I have hereunto set my hand and notarial seal at Portland, Oregon, this 10th day of February, 1949.

/s/ JOHN S. BECKWITH,

Notary Public for Oregon, residing at Portland,
Multnomah County, Oregon.

My commission expires May 31, 1950. [28]

[Endorsed]: Filed Mar. 16, 1949.

[Title of District Court and Causes.]

PLAINTIFF'S EXHIBIT L3

Be It Remembered That, pursuant to the Notice of Taking Depositions attached to the deposition of Moritz Jacoby and filed with said deposition, a copy of which notice is hereto annexed, and the further oral stipulations of counsel appearing in behalf of the respective parties hereinafter set forth, the deposition of Leonard B. Goldblatt was taken in behalf of the plaintiff in the above-entitled actions on Monday, February 7, 1949, beginning at the hour of 3:00 o'clock p.m. at 399 State Street, Salem, Oregon, before John S. Beckwith, a Notary Public for Oregon, residing at Portland, Multnomah County, Oregon.

Appearances:

JACK E. HURSH,

Appearing for Messrs. Mellin and Hanscom,
391 Sutter Street,
San Francisco, California,
Attorneys for the plaintiff.

JAMES M. NAYLOR,

Russ Building,
San Francisco, California,
Appearing for John Vaughan Groner,
Of attorneys for the defendants.

Plaintiff's Exhibit L3—(Continued)

(At said time and place the following stipulation was entered into between counsel present in behalf of the respective parties:)

It is stipulated and agreed by and between the attorneys for the respective parties in the above-entitled actions that the deposition of Leonard E. Goldblatt may be taken on behalf of the plaintiff in the above-entitled actions, [2] at 399 State Street, Salem, Oregon, at the hour of 3:00 o'clock p.m., before John S. Beckwith, a Notary Public for Oregon, and in shorthand by the said John S. Beckwith.

It is further stipulated that said deposition, when fully transcribed, may be used on the trial of the actions above-mentioned as by law provided; that all objections as to the form of the questions are waived unless made at the time the questions are asked, and that all objections as to the materiality, relevancy and competency of the questions or answers are reserved to the parties until the time of trial.

It is further stipulated that the submission of the deposition, when fully transcribed, to the witness for examination and reading to or by him and opportunity to the witness to make any changes in form or substance and the signing of same by the witness are hereby expressly waived.

It is further stipulated that John S. Beckwith, in accordance with the Oregon statute, is authorized to administer oaths throughout the State of Oregon.

Plaintiff's Exhibit L3—(Continued)

LEONARD B. GOLDBLATT

was thereupon produced as a witness in behalf of the plaintiff and, having been first duly sworn by the Notary, was examined and testified as follows:

Direct Examination [3]

By Mr. Hursh:

Q. Will you state your name?

A. Leonard B. Goldblatt.

Q. Where do you reside?

A. Salem, Oregon.

Q. What is your occupation?

A. Jeweler.

Q. How long have you been so engaged?

A. The last 33 years.

Q. Do you know a firm of manufacturing jewelers by the name of Granat Bros.? A. I do.

Q. Can you state where that firm is located?

A. San Francisco, California.

Q. How long have you known of this company, Granat Bros.?

A. Well, there is a little confusion there. I knew of them as Granat Bros. and L. A. Giacobbi & Company since about 1916.

Q. Do you know the type of merchandise that Granat Bros. manufactures and sells?

A. They manufacture rings and watch cases.

Q. Have you ever heard of the trade-mark "Wed-Lok"? A. I have.

Plaintiff's Exhibit L3—(Continued)

(Deposition of Leonard B. Goldblatt.)

Q. Employed to identify wedding ring and engagement ring ensembles?

A. Wedding rings and engagement rings both.

Q. And whose ring ensembles are sold under this trade-mark "Wed-Lok"? A. Granat Bros.

Q. How long have you known of the use of the trade-mark "Wed-Lok" in connection with ring ensembles?

A. Oh, about the last twelve to fourteen years.

Q. Do you sell Wed-Lok ring ensembles in your store? A. Yes, sir; we do.

Q. How long have you been selling Wed-Lok ring ensembles?

A. For the past two and a half to three years.

Q. When the word "lock," either spelled l-o-k or l-o-c-k is employed to identify wedding ring-engagement ring ensembles, whose rings do you identify?

Mr. Naylor: Just a moment. Let's hear the question.

(Last question read.)

Mr. Hursh: Let me add "by that trade-mark."

Mr. Naylor: That is objected to as stating a hypothetical situation, since it is not shown on this record that anyone identifies anything by the word "lock," spelled either l-o-k or l-o-c-k; and on the further ground that it is incompetent and irrelevant and beyond the issues of this case, and would call for the conclusion of this witness.

Plaintiff's Exhibit L3—(Continued)
(Deposition of Leonard B. Goldblatt.)

Mr. Hursh: You may go ahead and answer.

The Witness: Would you read the question again?

(Last question re-read.) [5]

A. I would identify them as a Granat Bros. product.

Q. Do you know the type or quality of merchandise that is sold by Granat Bros.?

A. Yes, sir; very high quality merchandise.

Q. Are the Wed-Lok ring ensembles of the same quality?

A. They are of the very finest quality.

Q. Can you tell us what reputation Granat Bros. enjoy in the Salem area?

A. The very best quality of merchandise.

Q. By the way, Salem is the capitol of the State of Oregon, is it not? A. It is.

Q. Have you ever advertised Wed-Lok ring ensembles? A. Yes, we have.

Q. What type of advertising do you employ for this purpose? A. Newspaper.

Q. Do you have any of those newspaper ads?

A. Yes, sir.

Q. You have produced a number of newspaper ads. The first one is dated February 29, 1948, in the Statesman, Salem, Oregon, said newspaper being a Sunday newspaper. On page 5 is an advertisement of Hartman Brothers advertising your

Plaintiff's Exhibit L3—(Continued)

(Deposition of Leonard B. Goldblatt.)

appointment as the authorized distributors of Wed-Lok by Granat. Was that ad placed in the Salem Statesman by your company? [6]

A. Yes, sir.

Q. And it advertises Wed-Lok wedding ring and engagement ring ensembles? A. Yes, sir.

Mr. Hursh: I will introduce that as Exhibit 1. May it be stipulated that photostatic copies of these exhibits may be substituted?

Mr. Naylor: Yes.

(The advertisement referred to, dated February 29, 1948, was thereupon marked as Plaintiff's Exhibit 1, and a photostatic copy thereof is made a part of this deposition.)

Mr. Hursh: The next ad is for Sunday, March 14, 1948, in the Statesman, Salem, Oregon, and I see an advertisement for Wed-Lok diamond rings. Could you state whether your company placed that advertisement in the Statesman on Sunday, March 14th, 1948? A. Yes, sir; we did.

Mr. Hursh: I introduce that advertisement as Exhibit 2.

(The advertisement referred to, dated March 14, 1948, was thereupon marked as Plaintiff's Exhibit 2, and a photostatic copy thereof is made a part of this deposition.)

Mr. Hursh: Another ad dated April 11, 1948, appearing in the Statesman, Salem, Oregon. I will

Plaintiff's Exhibit L3—(Continued)

(Deposition of Leonard B. Goldblatt.)

ask if your company [7] inserted that advertisement in the paper on April the 3rd, 1948?

A. Yes, sir; we did.

Mr. Hursh: I will introduce that advertisement as Exhibit 3.

(The advertisement referred to, dated April 3, 1948, was thereupon marked as Plaintiff's Exhibit 3, and a photostatic copy thereof is made a part of this deposition.)

Mr. Hursh: Another ad dated October 3, 1948, in the Statesman, Salem, Oregon, where you feature Wed-Lok diamond rings by Granat. Did your company insert that ad in the paper on October 3rd, 1948?

A. Yes, sir.

Mr. Hursh: I will introduce that.

Mr. Naylor: That ad and all ads subsequent to August 3rd, 1948, are objected to as pertaining to occurrences after the commencement of this action.

Mr. Hursh: I will introduce the advertisement of October 3rd, 1948, as Exhibit 4.

(The advertisement referred to, dated October 3, 1948, was thereupon marked as Plaintiff's Exhibit 4, and a photostatic copy thereof is made a part of this deposition.)

Mr. Hursh: On October 10, 1948, you placed an ad in the [8] Statesman, Salem, Oregon. Will you

Plaintiff's Exhibit L3—(Continued)

(Deposition of Leonard B. Goldblatt.)

tell me whether this ad featuring Wed-Lok Threesomes was inserted by your company?

A. Yes, sir; it was.

Q. And I notice you have in this ad a matching groom's ring. What trade-mark is that ring sold under by you?

A. Under the name of Wed-Lok.

Q. Does that groom's ring have any means for locking it in engagement with any other ring?

A. No, sir; it is not a locking ring.

Q. It is just a plain man's wedding ring?

A. A plain man's wedding ring, worn alone.

Mr. Hursh: I introduce that advertisement in evidence as Exhibit 5.

(The advertisement referred to, dated October 10, 1948, was thereupon marked as Plaintiff's Exhibit 5, and a photostatic copy thereof is made a part of this deposition.)

Mr. Naylor: The same objection as to Exhibit 4, and may I have a stipulation that this objection will run to all ads subsequent to August 3, 1948?

Mr. Hursh: So stipulated.

Q. The next advertisement appearing in The Statesman, Salem, Oregon, is October 24, 1948, showing Wed-Lok diamond rings by Granat. Did your company place that advertisement in the paper on that date? [9]

A. Yes, sir.

Mr. Hursh: I introduce that as Exhibit 6.

Plaintiff's Exhibit L3—(Continued)

(Deposition of Leonard B. Goldblatt.)

(The advertisement referred to, dated October 24, 1948, was thereupon marked as Plaintiff's Exhibit 6, and a photostatic copy thereof is made a part of this deposition.)

Q. (By Mr. Hursh): I see an ad that was inserted in The Statesman, Salem, Oregon, Sunday, November 28, 1948, featuring Wed-Lok diamond rings by Granat. Did your company insert that advertisement in the newspaper?

A. Yes, sir.

Q. On the date of November 28, 1948?

A. November 28, 1948.

Mr. Hursh: I introduce that in evidence as Exhibit 7.

(The advertisement referred to, dated November 28, 1948, was thereupon marked as Plaintiff's Exhibit 7, and a photostatic copy thereof is made a part of this deposition.)

Mr. Hursh: You have produced another advertisement dated January 2nd, 1949, in The Statesman, Salem, Oregon, again featuring Wed-Lok diamond rings by Granat. Was that advertisement placed in the newspaper by your company?

A. It was, sir.

Q. On January 2nd, 1949?

A. On January 2nd, 1949. [10]

Mr. Hursh: I will introduce that advertisement as Exhibit 8.

Plaintiff's Exhibit L3—(Continued)

(Deposition of Leonard B. Goldblatt.)

(The advertisement referred to, dated January 2, 1949, was thereupon marked as Plaintiff's Exhibit 8, and a photostatic copy thereof is made a part of this deposition.)

Mr. Hursh: You have another advertisement dated January 16, 1949, that appears in The Statesman, Salem, Oregon, on Sunday. Can you state whether or not that advertisement was introduced or placed in the newspaper by your company?

A. It was.

Mr. Hursh: I will introduce that as Exhibit 9.

(The advertisement referred to, dated January 16, 1949, was thereupon marked as Plaintiff's Exhibit 9, and a photostatic copy thereof is made a part of this deposition.)

Q. (By Mr. Hursh): I notice, Mr. Goldblatt, that in all of your advertisements you mention that these are Wed-Lok rings by Granat.

A. Yes, sir.

Q. Does that appear in all of your ads?

A. Yes, sir; it does.

Q. Is that your customary practice when advertising your Wed-Lok rings to mention that they are a Granat product? A. Yes, sir. [11]

Q. How often do you advertise Wed-Lok rings in the newspaper?

A. We average about one advertisement a month throughout the year. At certain times of the year

Plaintiff's Exhibit L3—(Continued)

(Deposition of Leonard B. Goldblatt.)

we advertise a little heavier than we do at other times.

Q. Those are advertisements that feature the Wed-Lok ring ensemble?

A. I am referring to Wed-Lok advertisements.

Q. Can you state approximately what percentage of your total engagement ring and wedding ring business comprises the Wed-Lok ensembles?

A. Well, we refer to the entire Granat Bros. series as Wed-Lok rings. All of the rings do not lock. If the customer does not particularly want a locking ring, a wedding ring or a man's matching wedding ring, we call them all the Wed-Lok series. And I would say that over 50 per cent of our business is in the Granat Bros. rings.

Q. I noticed in your window at the front of your store that you have quite a display of Wed-Lok rings. Do you customarily so advertise the Wed-Lok rings in your store by placing displays in the window?

A. We do.

Q. Have you ever heard of the trade-mark "Feature Lock" applied to wedding ring-engagement ring ensembles?

A. Yes, I have.

Q. When you first heard of this Feature Lock wedding ring-engagement [12] ring ensemble, what was your reaction?

Mr. Naylor: That is objected to as calling for the opinion and conclusion of this witness. It could not have any possible bearing on the outcome of the case.

Plaintiff's Exhibit L3—(Continued)

(Deposition of Leonard B. Goldblatt.)

Mr. Hursh: For the record, I am just asking Mr. Goldblatt to give his personal reaction to the use of the name "Feature Lock" when he first saw or heard of this trade-mark, and that definitely is important in the case.

The Witness: What was the question?

(Last question read.)

A. Well, in my opinion, it was another product of Granat Bros., put out with a trifle different name so as to open other accounts than they had opened on the Wed-Lok, as they had more or less restricted their accounts to a certain extent on Wed-Lok, and only opened a few select jewelers on the Wed-Lok trade-mark.

Q. Were you confused at that time as to the identity of the manufacturer of the Feature Lock ensembles?

A. I was. In fact, to the best of my recollection I asked the party who presented the rings to me if they were made by Granat Manufacturing Company and he assured me that they were not.

Q. Who showed you the Feature Lock ring ensemble the first time?

A. Well, to the best of my knowledge, it was a representative [13] of the S. H. Friend Company, although several houses had shown them to me, and it is possible that some other house had shown them to me prior to that.

Plaintiff's Exhibit L3—(Continued)

(Deposition of Leonard B. Goldblatt.)

Q. How long ago was that, would you state?

A. It was approximately a year or maybe a little over.

Q. Would you state whether or not the word "lock" is an important and valuable part of the trade-mark "Wed-Lok" as employed by you on wedding ring-engagement ring ensembles?

Mr. Naylor: Just a moment. That is objected to as calling for an opinion and conclusion of this witness, as to the significance of a word which is not in issue in this case since it is not maintained that anybody has ever used the word l-o-c-k or l-o-k per se as a trade-mark or a mark for anything.

The Witness: What was the question?

(Last question read.)

A. Well, it would be to us for the reason that a great many of our customers come in and designate or call for a ring as a lock type ring or a lock together ring, and to us it means the Granat Wed-Lok.

Q. (By Mr. Hursh): Do you ever have customers come into your store and ask for Wed-Lok ring ensembles by that trade-mark, designating the rings by that trade-mark? A. Oh, yes.

Mr. Naylor: That is objected to as calling for hearsay [14] in that it is assuming that customers have done this and is not calling for the best evidence. If there are such customers, let's have them produced.

Plaintiff's Exhibit L3—(Continued)

(Deposition of Leonard B. Goldblatt.)

Q. (By Mr. Hursh): Have your customers personally come in and asked you for Wed-Lok ring ensembles? A. Yes, sir.

Q. How often does this occur?

A. Oh, I would say two to three times a month.

Q. Did you ever have customers come into your store that you have personally served and ask for lock ring ensembles? A. Yes, sir.

Mr. Naylor: Will you repeat that question?

(Last question read.)

Q. (By Mr. Hursh): Do you know what quality of merchandise Granat Bros. manufactures and sells?

A. It is considered one of the fine quality brands on the market.

Q. Would you state whether or not the Wed-Lok rings are of the same quality?

A. Yes, sir; of very high grade quality.

Q. At the time you were offered Feature Lock ensembles did you actually see the ring ensemble that was offered to you? A. Yes, sir.

Q. Would you compare the quality of the Feature Lock ring [15] ensemble with that of the Wed-Lok ring ensemble sold by Granat Bros.?

Mr. Naylor: Is the question "Did you compare the quality" or "Would you"?

(The last question was read.)

Plaintiff's Exhibit L3—(Continued)
(Deposition of Leonard B. Goldblatt.)

Mr. Naylor: As to that we object as calling for the opinion and conclusion of this witness.

Mr. Hursh: This witness has been in the jewelry business for many years and is fully capable of examining jewelry and determining the exact quality of the jewelry merely by such an examination, and I think he has been qualified by this long experience in the jewelery business to give us a comparison of the two types of ring ensembles. Will you read the question.

(Last question read.)

A. In my opinion, the Feature Lock ensembles were not as fine quality or not as finely made merchandise, and any jeweler putting in the Feature Lock ring could buy the mountings alone and put in a much cheaper quality diamond than was used in the Wed-Lok ensembles.

Q. (By Mr. Hursh): Do the Wed-Lok ensembles come with the diamonds already mounted?

A. They do.

Mr. Hursh: No further questions. [16]

Cross-Examination

By Mr. Naylor:

Q. What does the word "lock" in connection with this class of merchandise signify to you, Mr. Goldblatt?

A. Well, the word "lock" itself designates rings that are held together.

Plaintiff's Exhibit L3—(Continued)

(Deposition of Leonard B. Goldblatt.)

Q. Does it denote or connote any particular type of holding device?

A. No, sir. That is, the word "lock"?

Q. The word "lock." Does it describe to you a snap button or snap fastener? A. No, sir.

Q. Does it denote to you two rings which may have a dove-tailed connection.

A. They could be locked together either in the head of the ring or the shank of the ring.

Q. It doesn't matter how they are locked, does it?

A. No.

Q. But the word "lock" still connotes to you or denotes to you that they are locked together in some way?

A. Correct, except the word "interlock," which we have also used. Do you call that a different word?

Q. What does that signify to you?

A. Well, that could signify the way we used to use it, on [17] a curved ring, where they were held together by the curve and not by an actual locking device.

Q. That is, by the contour of the ring surface; is that right? A. That is right.

Q. One abutting ring surface had a recess and the other had a protuberance or projection of some kind? A. Correct.

Q. And those were designed into the ring?

A. That is right. In fact, the first locking type

Plaintiff's Exhibit L3—(Continued)

(Deposition of Leonard B. Goldblatt.)

of ring that we had from Granat Bros. many years ago was what they termed an Interlock at that time.

Q. Interlock. What did that accomplish?

A. Well, it held the rings together; that is, the top part of the rings.

Q. It prevented rotative shifting, didn't it?

A. Correct.

Q. It did not prevent separation perpendicular to the axis of the rings at all, did it?

A. No, sir; it did not.

Q. So it was locked in one sense——

A. It was locked while on the finger, you might say.

Q. Now, what was there in the expression "Feature Lock" that led you to believe that the products had their origin [18] in Granat Bros.? Was it the word "Feature"?

A. No, it was the word "Lock."

Q. The word "Feature" had no significance to you at all in connection with Granat Bros., did it?

A. No, sir; the word "Feature" did not.

Q. And since you have given us your definition of the word "lock," why was it that the word "lock" as it appeared in Feature Lock conjured up the picture of Granat Bros. as a possible manufacturer?

A. Because of the fact that it has been done before in the trade: That they come out with a product and will advertise it and sell it to a certain number of accounts, and then open up with a com-

Plaintiff's Exhibit L3—(Continued)

(Deposition of Leonard B. Goldblatt.)

petitive line with a similar name or similar qualifications and sell it to a competitor.

Q. It may have been just the qualifications that you speak of that suggested the common origin; isn't that true?

A. The qualifications of the lock, you mean?

Q. The type of ring?

A. Yes; because of the fact it was another lock ring I figured out that Granat was possibly coming out with another locking ring to either sell to jobbers or to jewelers. Granat had formerly sold rings at times through jobbers, too.

Q. They had done that at one time, had they?

A. Yes, sir. It was jobbers that showed the rings.

Q. Whereas your purchases now are made directly from whom? [19]

A. From Granat Bros.

Q. Are you sure of that? Is it Granat Bros. or Granat Manufacturing Company?

A. Granat Manufacturing Company.

Q. Your business is done with Mr. Joe Weinroth, isn't it, or Mr. Giacobbi?

A. Not directly. Their representative in this territory is Howard Ball.

Q. Where is he from? A. Portland.

Q. Now, Mr. Hursh mentioned there was quite a display of Wed-Lok rings in the window. I could

Plaintiff's Exhibit L3—(Continued)

(Deposition of Leonard B. Goldblatt.)

only count three. Have you got more than three in the window at this time?

A. There is at least ten or twelve.

Q. How are they marked? A. In sets.

Q. How are they marked for reading by the passer-by who looks in the window?

A. There is one trade-mark "Wed-Lok," and the rest of them are surrounding this trade-mark in individual boxes with just price tags on them; no marking of it being a locked ring except the rings are locked together and put into one section.

Q. I observed three boxes marked "Threesome," with the word [20] "Threesome" alone in the inner cover of the top of the box. A. Yes, sir.

Q. That is true, isn't it?

A. Yes, sir. Those are Granat rings too.

Q. Are those Wed-Lok rings?

A. If you refer to the strict meaning of Wed-Lok, no; but we call them Wed-Lok. Any here that are not joined together, we refer to them as a product of Granat Manufacturing Compnay under the name of "Wed-Lok," the same as we sell their men's wedding rings as a Wed-Lok wedding ring to match the Wed-Lok ladies' rings.

Q. How are the men's wedding rings branded? Are they branded or stamped?

A. With the word "Wed-Lok" on the inside of the ring?

Q. Yes, sir. A. No, sir.

Plaintiff's Exhibit L3—(Continued)

(Deposition of Leonard B. Goldblatt.)

Q. Then are we to understand that it is merely your usage which has extended the term "Wed-Lok" to embrace the men's wedding rings?

A. Well, we have advertised them as Wed-Lok Threesomes, which refers to the men's wedding rings as part of the ensemble of Wed-Lok rings.

Q. For what period of time have you been getting boxes from Granat Manufacturing Company or Granat Bros. with the word "Threesome" alone, with no other word in the top of the [21] inside cover?

A. Oh, for the past year or year and a half, maybe.

Q. Now, you spoke of Wed-Lok merchandise amounting to approximately 50 per cent of your ring ensemble business?

A. Yes, sir.

Q. Those were your figures, weren't they?

A. Of Wed-Lok, strictly in the Wed-Lok?

Q. Yes.

A. No, I referred to it as the Granat Bros. mountings in the Threesomes, that we also referred to as the Wed-Loks, and the men's wedding rings.

Q. Would you re-state the percentage, then, as it pertains to goods received by you from Granat Manufacturing Company or Granat Bros. marked with the trade-mark "Wed-Lok"?

A. That would refer to the lady's wedding ring and solitaire that are snapped together?

Q. That is right, sir.

Plaintiff's Exhibit L3—(Continued)
(Deposition of Leonard B. Goldblatt.)

A. That would possibly account for 25 per cent of our diamond sales.

Q. Twenty-five per cent? A. Yes, sir.

Q. Now, will you translate that into numbers of sets?

A. Oh, we have average for the last two years about a dozen Wed-Lok sets a month.

Q. A dozen a month? [22]

A. On an average; some months a little less; some months a little more.

Q. I notice that in each of the ads, Plaintiff's Exhibits 1 to 9, inclusive, the word "lock" is used to describe a characteristic of the ring. For example, will you examine No. 1 in that connection and see if you find in it the expression "locked together."

A. "They cannot slide out of position for they are locked together."

Q. You meant by that wording that the rings actually locked together, did you not?

A. Yes, sir.

Q. And will you examine No. 2, and see if a similar expression is employed?

A. "They cannot slide out of position for they are locked together."

Q. Now, just to save time, Mr. Goldblatt, will you please examine Exhibits 3 to 9, inclusive, and state whether or not it is a fact that the word "lock" or the expression "locked together" is used in each

Plaintiff's Exhibit L3—(Continued)

(Deposition of Leonard B. Goldblatt.)

of them to describe a characteristic of the connection of the rings.

A. The words "lock together" or "locked together" appear in every advertisement.

Q. When the representative offered you the Feature Lock merchandise did he exhibit the rings themselves? [23]

A. Yes, sir.

Q. Was that here in your store in Salem?

A. Yes, sir.

Q. Did you examine the rings?

A. Yes, sir.

Q. Was there any mark of origin on the rings other than the words "Feature Lock"?

Mr. Hursh: I object to that question. He didn't state whether there was any mark of origin on the rings. You haven't asked the witness that. You attempt to state that the mark "Feature Lock" was on the ring, which has not been testified to by this witness. I think it is irrelevant, immaterial and incompetent.

Q. (By Mr. Naylor): In order to simplify that, you examined the rings, did you not, Mr. Goldblatt?

A. Yes, sir.

Q. What did you observe as to markings of any kind?

A. I didn't look for any markings. I looked at the lock.

Q. You didn't pay any attention to the markings?

Plaintiff's Exhibit L3—(Continued)
(Deposition of Leonard B. Goldblatt.)

A. No, sir. If I did, it skips my mind.

Q. Was it because the rings locked together that you surmised that they had origin in Granat Bros.?

A. Well, that and the combination of the name "Lock."

Q. Well, how did the combination with the name "Lock" in [24] it come into the conversation? Was it mentioned to you by the salesman?

A. The salesman that showed them to me said that it was his new locked together ring the same as Granat had in their line with a different type of lock.

Q. Did he mention the words "Feature Lock"?

A. I don't recall that he did. I asked him what they called it and he said a Feature Lock, which I understand at that time was spelled l-o-k instead of l-o-c-k.

Q. As I understand your testimony, you then and there asked him if this merchandise had been manufactured by Granat?

A. Oh, yes; I did.

Q. In that original conversation?

A. In our original conversation.

Q. As I understand your testimony, he assured you that it was not? A. That is right.

Q. Your confusion was rather short lived, wasn't it?

A. Well, it was when I first looked at it that I thought it was a Granat Bros. product, and I asked

Plaintiff's Exhibit L3—(Continued)

(Deposition of Leonard B. Goldblatt.)

him definitely if it was a Granat Bros. product and he assured me that it was not.

Q. How long did this conversation take?

A. Oh, we perhaps chatted for a half hour over the rings. [25]

Q. Now, I think you said that you have had knowledge of the Wed-Lok by Granat Bros. for twelve to fourteen years? A. Yes, sir.

Q. Did you have any knowledge of it during the war years? A. No, sir.

Q. Was it available to you during the war years?

A. No, sir.

Q. Did you make any effort to obtain merchandise during the war years? A. No, sir.

Q. Did any salesman call on you offering merchandise under Wed-Lok during the war years?

A. No, sir.

Q. When was it after the war years that the merchandise under Wed-Lok was first available to you?

A. About three years ago to this time.

Q. Would you fix a date? Can you fix a date on that for us?

A. As to the exact month, you mean?

Q. Approximately.

A. Oh, I would say it would possibly be in February or March of 1946. Young Giocobbi came up with it on that trip from San Francisco.

Q. Did you place an order with him at that time?

Plaintiff's Exhibit L3—(Continued)
(Deposition of Leonard B. Goldblatt.)

A. No, sir. [26]

Q. When did you first place your order after the war years? A. Around a year after that.

Q. And that would be approximately when in 1947?

A. I think our first shipment of Wed-Loks came in about April or May of 1947.

Q. April or May of 1947?

A. At that time young Mr. Giacobbi called on us again at that time at the special request of my brother, who was in the jewelry business in Tacoma, because on his first trip through here I had told him that I was too heavily stocked with Traub merchandise to put in the line, and suggested he call on my brother in Tacoma and he would sell the line which he did, and my brother put it in a year ahead of me. He had very good success with the Granat Manufacturing line and then he asked him to call on me again the following year.

Q. And then you commenced your business with them?

A. Correct; although previous to that, as far back as 1917 or '18, I had bought Granat Bros. merchandise from Joe Weinroth and in succeeding years.

Q. Did you purchase any Wed-Lok rings from Granat Bros. between the years, say, May of 1947 and December of 1940?

A. '47 and '40? Going backwards?

Plaintiff's Exhibit L3—(Continued)

(Deposition of Leonard B. Goldblatt.)

Q. Yes.

A. No, sir; I didn't purchase anything from the Granat [27] Manufacturing during that period.

Q. Are you aware of anybody in the jewelry business manufacturing interlocking wedding and engagement rings other than Granat and the Feature Lock Company?

A. Well, there are other lock rings on the market today, but I understand that they are put out under a different name and manufactured by the Feature Company.

Q. Have you heard of any rings in addition to those manufactured by Feature and Granat, locking rings?

A. I believe that Gomez Company in San Francisco have a locking ring that was shown to me by a Mr. Henderson. That was also a locking type ring, and I don't believe that was a Feature Lock product.

Mr. Naylor: I think that is all.

Redirect Examination

By Mr. Hursh:

Q. Mr. Goldblatt, during the war years did you have difficulty in obtaining Elgin watches?

A. Yes, sir.

Q. As a matter of fact, will you state whether or not you had difficulty in obtaining many lines of your merchandise during the war years?

Plaintiff's Exhibit L3—(Continued)

(Deposition of Leonard B. Goldblatt.)

A. There were a good many lines. Even plain yellow gold wedding rings were very hard to obtain. During that period we had to have some of the smaller shops manufacture them [28] specially for us in order to obtain them.

Q. What was the reason for the difficulty in obtaining merchandise during the war years, if you know?

A. Well, for one thing, there was more customers than there was merchandise, and a great many items that were well known went under the allotment basis and they were distributed out very meagerly to us. We had the exclusive Towle agency for sterling silver, and we could have sold twenty or thirty times the amount that the Towle Company was able to ship us on our allotment.

Q. So that the fact that Wed-Lok ring ensembles were not available to you was no different than the fact that many other types of merchandise you desired to sell were not available to you during this war period; is that correct?

A. That is correct.

Mr. Hursh: That is all.

Mr. Naylor: That is all.

Mr. Hursh: Jim, do you stipulate that the witness need not read and sign the deposition?

Mr. Naylor: Yes.

Plaintiff's Exhibit L3—(Continued)

(Deposition of Leonard B. Goldblatt.)

Mr. Hursh: Mr. Goldblatt, do you agree that it will not be necessary for you to read and sign your deposition?

The Witness: I do.

(Witness excused.)

(Reading and signature waived.) [29]

CERTIFICATE OF NOTARY

United States of America,
State of Oregon, County of Multnomah—ss.

I, the undersigned, a Notary Public for Oregon, residing at Portland, Multnomah County, do hereby certify that on Monday, February 7, 1949, before me as such Notary, at 399 State Street, Salem, Oregon, personally appeared, pursuant to Notice of Taking Depositions filed with the deposition of Moritz Jacoby, a copy of which notice is hereto annexed, and the oral stipulations of counsel hereinbefore set forth, Leonard B. Goldblatt, a witness in behalf of the plaintiff herein; that Mr. Jack E. Hursh, of attorneys for the plaintiff, appeared in its behalf, and Mr. James M. Naylor, of attorneys for the defendants, appeared in their behalf; and the said witness being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, and being carefully examined, in answer to oral interrogatories propounded by the attorneys

Plaintiff's Exhibit L3—(Continued)

above named on direct and cross-examination testified as in the foregoing annexed deposition, pages 1 to 52, both inclusive, set forth.

I further certify that all interrogatories propounded to said witness, together with the answers of said witness thereto, and all objections and motions taken or made, and [30] other proceedings occurring upon the taking of said depositions, were then and there taken down by me in shorthand and thereafter reduced to typewriting, and that the foregoing transcript, pages 1 to 29, both inclusive, constitutes a full, true and accurate transcript of said deposition and proceedings, so taken by me in shorthand as aforesaid; and that the submission of said deposition, when transcribed, to the witness for examination and reading to or by him and opportunity to the witness to make any changes in form or substance and the signing of same by the witness were waived; and that said deposition has been retained by me for the purpose of sealing up and directing to the Clerk of the above-entitled court, as required by law.

I further certify that the photostatic copies of documents annexed hereto, numbered "1" to "9," both inclusive, are photostatic copies of the identical documents so marked as exhibits in behalf of the plaintiff upon the taking of said deposition.

I further certify that I am not a relative or employee or attorney or counsel for any of the parties,

Plaintiff's Exhibit L3—(Continued)

or a relative or employee of such attorney or counsel,
or financially interested in the said action.

In Witness Whereof, I have hereunto set my
hand and notarial seal at Portland, Oregon, this
10th day of February, 1949.

[Seal] /s/ JOHN S. BECKWITH,
Notary Public for Oregon, residing at Portland,
Multnomah County.

My commission expires 5/30/50. [31]

[Endorsed]: Filed Mar. 16, 1949.

[Title of District Court and Causes.]

PLAINTIFF'S EXHIBIT M3

Deposition of Phil Kleiger

Deposition of Phil Kleiger, taken on behalf of the plaintiff, at 520 Equitable Building (adjourned to this location by stipulation of counsel from 912 Sixteenth Street), in the City and County of Denver, State of Colorado, at ten o'clock a.m., on the 9th day of February, 1949, before Harold N. Woodman, a notary public within and for the City and County of Denver, State of Colorado, pursuant to the annexed notice.

Appearances:

For the Plaintiff:

JACK E. HURSH, ESQ.,
MELLIN & HANSCOM.

For the Defendants:

JAMES M. NAYLOR, ESQ.,
NAYLOR & LASSAGNE,
JOHN VAUGHAN GRONER,
FISH, RICHARDSON & NEAVE,
New York.

Mr. Hursh: Is it stipulated that we may attach a copy of the original notice of this deposition in lieu of the original, which was attached to the depositions at Portland?

Mr. Naylor: It is so stipulated.

Mr. Hursh: And the usual stipulation will be

Plaintiff's Exhibit M3—(Continued)

(Deposition of Phil Kleiger.)

entered into that Mr. Woodman may take this deposition stenographically and transcribe it into typewritten form and then file it with the Clerk of the Court?

Mr. Naylor: That is right; reserving all objections [2] except to the form of the questions.

Mr. Hursh: That is correct, yes.

PHIL KLEIGER

a witness produced on behalf of the plaintiff, being first duly sworn to state the truth, the whole truth, and nothing but the truth, testified on his oath as follows:

Direct Examination

By Mr. Hursh:

Q. Will you state your name, please?

A. Phil Kleiger.

Q. What is your residence at present?

A. 400 Clermont Street.

Q. What is your occupation? A. Jeweler.

Q. How long have you been engaged in the jewelry business?

A. Approximately thirty to thirty-five years.

Q. How long have you been so engaged in Denver? A. All the time.

Q. Do you know of a company that manufactures jewelry by the name of Granat Brothers?

A. Yes.

Q. Do you know where that company is located?

Plaintiff's Exhibit M3—(Continued)
(Deposition of Phil Kleiger.)

A. San Francisco.

Q. What type of merchandise does Granat Brothers manufacture [3] and sell?

A. Wedding rings and mountings.

Q. Have you ever heard of a ring ensemble known as Wed-Lok ring ensemble?

A. Yes, I have.

Q. Who manufactures the ring ensemble and sells it under the name or trade-mark "Wed-Lok"?

A. Granat Brothers.

Q. How long have you known of the use of the trade-mark "Wed-Lok" in connection with ring ensembles?

A. I judge around twelve to thirteen years.

Q. Over that twelve or thirteen years whose products have been identified with the trade-mark "Wed-Lok"? A. Granat Brothers.

Q. To your knowledge, has that trade-mark "Wed-Lok" ever been used in connection with the products of any other manufacturers besides Granat Brothers? A. No, sir.

Q. When the word "Lok," either spelled "L-o-c-k" or "L-o-k," is used in connection with wedding ring or engagement ring ensembles, with whose products do you identify it?

A. Granat Brothers.

Q. In your opinion, is the word "Lok" or trade-mark "Wed-Lok" a valuable part of that trade-mark?

Plaintiff's Exhibit M3—(Continued)

(Deposition of Philip Kleiger.)

Mr. Naylor: That question is objected to as pertaining to matters wholly irrelevant and incompetent under [4] any issue in this case, and on the ground that it calls for a mere conclusion of this witness.

A. Yes, sir.

Q. Do you sell Granat Brothers products in your store? A. Yes, sir.

Q. What type of Granat Brothers products do you sell?

A. Wedding rings and mounted diamond rings, solitaires, ladies' mountings.

Q. Do you know what quality of merchandise Granat Brothers sells?

A. It is the very best quality.

Q. Would that apply to the Wed-Lok ring ensemble that you sell in your store? A. Yes.

Q. You have sold Wed-Lok rings in your store?

A. Yes, sir.

Q. In the sale of Wed-Lok rings in your store, would you say that the use of the word "Lok" in connection with the sale of those rings is a valuable part of the trade-mark "Wed-Lok"?

Mr. Naylor: That is objected to for the same reason, namely as pertaining to matter wholly without the issues of this case and as calling for the mere conclusion of this witness. A. Yes, sir.

Q. How long have you sold Granat Brothers products? [5]

Plaintiff's Exhibit M3—(Continued)
(Deposition of Philip Kleiger.)

A. Approximately twenty to twenty-five years.

Q. Over what period of time have you sold Wed-Lok ring ensembles?

A. I would say about twelve years.

Q. Have you any early records of your purchase and sale of Wed-Lok ring ensembles?

A. No, I don't retain records after six years.

Q. Is it your business custom to destroy records after a six-year period?

A. All records after six years.

Q. But you did purchase from Granat Brothers during the past twelve years Wed-Lok ring ensembles?

A. Yes, with the exception of during the war time.

Q. Did you sell those in your store as Wed-Lok ring ensembles? A. Yes, sir.

Q. Using that name "Wed-Lok" in the sale of the rings? A. Yes, sir.

Q. Do you advertise the sale of Wed-Lok rings in Denver? A. I do, yes, sir.

Q. What medium of advertising do you employ?

A. Radio, newspaper.

Q. How often do you advertise Wed-Lok ensembles in your radio program?

A. Well, I touch on it in most every program. I can't [6] say exactly. Most every program where I have diamond rings mentioned. I can't say exactly. There is no regular setup. At times, three

Plaintiff's Exhibit M3—(Continued)

(Deposition of Philip Kleiger.)

announcements a week. It might be that it would be twice a month that I mention Wed-Loks, or once a month. On most every program we have.

Q. But you have mentioned Wed-Lock ring ensembles consistently on your radio program?

A. I have, yes.

Q. What other medium of advertising did you say you employed? A. Newspapers.

Q. How often do you run your advertisements in the newspapers?

A. It averages once and sometimes two times a month, I would say.

Q. Do you in all this advertising feature the trade-name "Wed-Lok"? A. Yes.

Q. About how often would you say you featured Wed-Lok ring ensembles in your newspaper advertising?

Mr. Naylor: That is objected to as calling not for the best evidence. If there are newspaper advertisements, I think they ought to be produced.

A. There is, as I said, no regular setups; sometimes once a month, or twice a month. There is no definite setup as to that.

Q. Referring to your radio advertising, have you been [7] able to secure some of the scripts that you employed in your radio programs?

Plaintiff's Exhibit M3—(Continued)
(Deposition of Phil Kleiger.)

A. I secured those three folders this morning.

Q. You have produced three folders of radio script that are kept by whom? Who kept these folders of script?

A. The Niemann Advertising Agency.

(Conference.)

Q. In one of these books that you have just handed me I note a radio script dated August 20, 1947. Over what station was that broadcast?

A. KOA.

Q. Was that program broadcast over Radio Station KOA on August 20, 1947?

A. According to the records, it was, yes, sir.

Q. And these are the records of your company that are kept by your advertising agency?

A. Yes, sir.

Q. Does that advertising mention Wed-Lok rings? A. Yes, it does. Wed-Lok, yes.

Q. Will you read this one sentence that I am pointing to, into the record?

A. "It's Granat's new ring creation—'Wed-Lok.'"

Q. Read the next sentence.

A. "Imagine—two separate rings that click together, keeping them correctly aligned to one another, no matter how [8] busy the hand that wears them—all this and beauty too. Yes, beautiful, blue-

Plaintiff's Exhibit M3—(Continued)

(Deposition of Phil Kleiger.)

white diamonds, set in hand made, tempered mountings of white or natural gold or platinum.”

Mr. Hursh: I will introduce that radio script as Exhibit 1, and if it is satisfactory, I will mark the script, Mr. Naylor.

Mr. Naylor: Yes.

Q. Turning to the next script, dated August 18, 1947, do you have a mention in this script of the rings Wed-Lok? A. Yes, sir.

Q. Will you read that one sentence that I indicate?

A. “Especially eye-appealing is their new ‘Wed-Lok’ creation—two separate rings that lock together.”

Mr. Hursh: I introduce this script as Exhibit 2.

Q. The next script is the script of August 13, 1947. Do you mention in that script the ring creation under the trade-mark “Wed-Lok”?

A. Do you want me to read this?

Q. Yes.

A. “Equally popular is the new ‘Wedlock’ creation by Granat—two separate rings that ‘click’ together, keeping them correctly aligned to one another.”

Mr. Hursh: I want to introduce this script as Exhibit 3.

Mr. Naylor: For further identification, are all of [9] these scripts material which was broadcast over KOA?

Plaintiff's Exhibit M3—(Continued)
(Deposition of Phil Kleiger.)

The Witness: Yes, sir.

Q. I show you script of August 4, 1947, for Radio Station KOA. Will you state whether or not that mentions the trade-mark "Wed-Lok"?

A. Yes, sir.

Q. Will you read the part I indicate?

A. "It's exciting—it's revolutionary—it's a miracle. Of course I mean the new Wed-Lok ensemble by Granat. No need to twist and turn these rings to keep them in position—no matter how active your hands may be. Solitaire and wedding band are completely separate, but a tiny gesture and 'click'—their loveliness is locked together, keeping them always correctly aligned to one another."

Mr. Hursh: I will introduce that as Exhibit 4.

Q. I show you script dated December 3, 1947, for Radio Station KOA, and ask you if you in that script mention Wed-Lok ring ensemble?

A. Yes, sir.

Q. Will you read the portion relating to the Wed-Lok ensemble?

A. "As radiantly lovely as the bride herself are the Wed-Lok wedding and engagement ring combinations on display at this store. Wed-Lok rings can't slip out of position, they can't rub or wear against one another—for a tiny [10] gesture locks them together (although you may wear them separately whenever you choose)."

Mr. Hursh: I will mark that and introduce it in evidence as Exhibit 5.

Plaintiff's Exhibit M3—(Continued)

(Deposition of Phil Kleiger.)

Q. I show you radio script for December 1, 1947, over Station KOA. In this script do you mention Wed-Lok rings? A. Yes, sir.

Q. Will you read the part indicated?

A. "Folks, let the Kortz Jewelry Company reveal to you the secret of Wed-Lok rings. They are new—they are different. With Wed-Lok rings, a modern miracle has been accomplished in ring-making. The engagement and wedding band may be worn individually—yet with a quick 'click' they join together and become as one. Thus keeping them in correct position at all times—no matter how active your hands may be. Be sure to see the beautiful Wed-Lok 'duo'—now featured for just \$165."

Mr. Hursh: I will introduce that script in evidence as Exhibit 6.

Q. I show you radio script for November 28, 1947, for Radio Station KOA, and ask you if you mention Wed-Lok rings in that script?

A. Yes, sir, I do.

Q. Will you read the part indicated by me in that script?

A. "At the Kortz Jewelry Company, the store which has [11] been in business 54 years, you'll find gorgeous blue-white solitaires and matching wedding bands—in hand-made mountings fashioned of Granat tempered gold. Be sure to see the new Wed-Lok combination with a perfect blue-white dia-

Plaintiff's Exhibit M3—(Continued)
(Deposition of Phil Kleiger.)

mond solitaire surrounded by two side diamonds—and the perfectly matched wedding band of three diamonds—now priced at just \$165.”

Mr. Hursh: I will introduce that script as Exhibit 7.

Q. I show you radio script of November 24, 1947, for Station KOA, and ask you if the trade-mark “Wed-Lok” is mentioned in that script? .

A. Yes, sir.

Q. Will you read the part pertaining to the Wed-Lok trade-mark?

A. “You’ll be delighted to discover Wed-Lok bridal combinations. Like all Granat rings, Wed-Lok ensembles are set with fine quality diamonds. And you’ll find many outstanding values if you select your rings now. See the new Wed-Lok combination with a perfect blue-white diamond solitaire surrounded by two side diamonds—and the perfectly matched wedding band of three diamonds—now priced at just \$165.”

Mr. Hursh: I will introduce that in evidence as Exhibit 8.

Q. Will you state whether or not the radio script of [12] November 17, 1947, for Station KOA mentions the Wed-Lok ring ensembles?

A. Yes, sir.

Q. Will you read the portion of that script pertaining to the Wed-Lok ensemble?

A. “Wed-Lok combinations including the engagement and wedding band are of finest quality

Plaintiff's Exhibit M3—(Continued)

(Deposition of Phil Kleiger.)

and matchless beauty. And you'll find beautiful combinations priced for any pocketbook. Be sure to see the lovely 6 diamond bridal pair—3 diamonds in the beautifully designed engagement ring—and 3 diamonds in the matching wedding band."

Mr. Hursh: I introduce that in evidence as Exhibit 9.

Q. Turning now to the radio script of October 22, 1947, for Station KOA, have you mentioned Wed-Lok rings in this script? A. Yes, sir.

Q. Will you read the portion pertaining to Wed-Lok rings?

A. "You'll be delighted when you discover Granat Wed-Lok rings at the Kortz Jewelry Company. Wed-Lok rings can't slip out of position on your finger and they can't rub against one another—for one tiny gesture locks them together—although you may wear them separately if you wish. Each Granat diamond solitaire is perfect blue-white quality and decorative diamonds are carefully selected for color and brilliance. And say, speaking of diamonds—here's an unusual value now [13] offered at the Kortz Jewelry Company. A six-diamond bridal pair combination."

Mr. Naylor: Is the price indicated there?

Mr. Hursh: Yes.

Q. Will you read the price, please?

A. \$49.50.

Q. Would that be a Wed-Lok ring ensemble?

Plaintiff's Exhibit M3—(Continued)
(Deposition of Phil Kleiger.)

A. No. Well, that pertains, speaking of diamonds, there is an unusual diamond value over at Kortz'. These (indicating) are pertaining to the Wed-Lok rings, which is separate, at the start of the paragraph.

Q. Now, in the radio script of October 15, 1947, for Radio Station KOA, will you state whether or not Wed-Lok ring ensembles are mentioned?

A. Yes, sir.

Q. Will you read the portion pertaining to Wed-Lok ring ensembles?

A. "Folks, let the Kortz Jewelry Company reveal to you the secret of Wed-Lok rings by Granat. They are new—they are different. With Wed-Lok rings, Granat has accomplished a modern miracle in ring-making. The engagement and wedding band may be worn individually—yet with a quick 'click' they join together and become as one. Be sure to see the beautiful Wed-Lok 'duo'—now featured at the Kortz Jewelry Company for just \$165." [14]

Q. I show you radio script for October 6, 1947, for Station KOA, and ask you if you mentioned Wed-Lok ring ensembles in that script?

A. Yes, sir.

Q. Will you read the portion pertaining to Wed-Lok ensembles?

A. "Have you seen the new Granat Wed-Lok rings at the Kortz Jewelry Company? If not, do so at the first opportunity. Wed-Lok ensembles

Plaintiff's Exhibit M3—(Continued)

(Deposition of Phil Kleiger.)

are an exclusive Granat patented feature—the engagement and wedding band may be worn individually—yet with a quick ‘click’ they join together and become as one. This means your rings are always correctly aligned to one another. Be sure to see the beautiful Wed-Lok ‘duo’—now featured at the Kortz Jewelry Company—both rings for just \$165.”

Q. I show you script of September 29, 1947, for Radio Station KOA. In this script do you mention Wed-Lok rings? A. Yes.

Q. Will you read the portion pertaining to the Wed-Lok rings in this script?

A. “‘About-to-be-engaged’ couples will be delighted to discover Granat Wed-Lok rings—at the Kortz Jewelry Company. A tiny gesture locks the engagement and wedding rings together, keeping them always correctly aligned to one another. Fine quality diamonds, selected for uniformity, color and [15] brilliancy are set in the exclusive platinum and gold tempered mountings—wrought in matching designs to protect your diamonds. See the beautiful Wed-Lok ‘duo’—now featured at the Kortz Jewelry Company for just \$165. Wed-Lok rings are the modern miracles in ring-designing. See them soon at the Kortz Jewelry Company.”

Mr. Hursh: I will introduce the script of October 22, 1947, as Exhibit 10. The radio script for October 15, 1947, as Exhibit 11. The script for Oc-

Plaintiff's Exhibit M3—(Continued)

(Deposition of Phil Kleiger.)

tober 6 as Exhibit 12. The script for September 29, 1947, will be introduced as Exhibit 13.

Q. Will you examine the script for September 1, 1947, for Station KOA and state whether or not you mention Wed-Lok rings by Granat?

A. Yes, sir.

Q. Will you read that portion of the script referring to Wed-Lok rings?

A. "On those occasions when you know you're looking your best, your Wed-Lok rings by Granat look their very best too. For no matter how active your hands may be, your rings are always correctly aligned to one another. You see, Wed-Lok rings can't slip out of position on your finger—they can't rub or wear against one another—a tiny gesture locks them together—although you may continue to wear them separately whenever you choose. Stop in today and see them on exclusive [16] display in Denver at the Kortz Jewelry Company. In white or natural gold you may have a perfect blue-white diamond solitaire with 2 side diamonds; and wedding ring with three diamonds—priced at only \$200."

Mr. Hursh: I will introduce that script as Exhibit 14.

Q. I show you script for February 25, 1948, for Station KOA. Will you state whether or not Wed-Lok rings are mentioned in that script?

A. Yes, sir.

Plaintiff's Exhibit M3—(Continued)

(Deposition of Phil Kleiger.)

Q. Will you read the portion pertaining to Wed-Lok rings?

A. "Fellows—make that engagement ring a truly lovely one—it represents the dream of a lifetime to her. The Kortz Jewelry Company has a wonderful selection of lovely engagement and wedding bands, beautifully designed and featuring the finest quality blue-white gems. See the Wed-Lok bridal rings by Granat—the solitaire and wedding band are completely separate but a tiny gesture locks them together—keeping them always in correct position. Mounted in tempered gold settings—your diamonds have greater protection and greater beauty."

Mr. Hursh: I will introduce this script as Exhibit 15.

Q. Referring to the script for January 28, 1948, for Station KOA, will you state whether that refers to Wed-Lok rings by Granat?

A. Yes. "On those occasions when you know you're looking [17] your best, Wed-Lok rings by Granat look their very best too, for they are always aligned correctly to one another."

Q. That reads, "for they are always correctly aligned to one another."

A. "For they are always correctly aligned to one another. You see, Wed-Lok rings can't slip out of position on your finger—they can't rub or wear against one another—a tiny gesture locks them to-

Plaintiff's Exhibit M3—(Continued)

(Deposition of Phil Kleiger.)

gether (although you may continue to wear them separately whenever you choose). And all the fine Granat quality you've come to know and expect is present in Wed-Lok rings; each diamond solitaire is a perfect blue-white quality, and decorative diamonds are carefully selected for color and brilliance. Come in and see the beautiful Wed-Lok combination priced at just \$165. Wed-Lok rings are guaranteed for a life-time."

Mr. Hursh: I introduce that script as Exhibit 16.

Q. I notice, Mr. Kleiger, that you have stated in many of your ads that the Wed-Lok ensemble sells for \$165. Is that the cheapest price Wed-Lok ensemble that you have sold of the Wed-Lok type?

A. I believe that is, yes; that is the starting point;—

Q. To what price do they go?

A. —I think there is one starts at \$150, tax included.

Q. And how high do the prices go, that you handle?

A. There is an ensemble—well, I have them in platinum—I [18] couldn't say just exactly how much.

Q. But they do go above \$165?

A. Oh, yes. I think there are rings for four hundred and more dollars, in platinum. I can't say the exact price.

Q. With reference to your newspaper advertise-

Plaintiff's Exhibit M3—(Continued)

(Deposition of Phil Kleiger.)

ments, have you attempted to locate your newspaper advertisements?

A. I have tried, on very short notice, but I wasn't successful in doing so, only obtaining a few of them that he had at the office; due to the change of advertising agency, it had a tendency to kind of disrupt it, so far as getting all the newspaper advertisements which we had.

Q. But you have produced six advertisements that you have run in the Denver papers, have you?

A. Yes. Well, those are the six that my previous advertising man has laid his hands on in a hurry, and he brought them in to me last night.

Q. One of these ads it is noted was run in The Denver Post on August 3, 1947, featuring Wed-Lok Handmade Ensembles. Another was run in The Denver Post on September 4, 1947. Another advertisement was run in The Denver Post on October 17, 1947. One in The Denver Post October 31, 1947. One in the Rocky Mountain News August 10, 1947. And the last was in the Rocky Mountain News in August, 1947, with the day not shown. Will you state whether or not all of those ads were run in the respective papers on the dates shown? [19]

A. Yes, sir.

Mr. Hursh: I will introduce these advertisements in evidence as Exhibit 17.

Q. These are the only ads that you have discovered at the present time?

Plaintiff's Exhibit M3—(Continued)
(Deposition of Phil Kleiger.)

A. Those are all they could get for me.

Q. I notice in your radio script that you mention the fact that the Wed-Lok rings are made by Granat. Is that usually your practice in the radio script, that you mention the manufacturers, Granat Brothers? A. Yes, sir.

Q. Have you ever come across a ring ensemble known as the Feature-Lok ensemble?

A. I came across it in advertising, yes.

Q. Was this Feature-Lok trade-mark applied to a wedding ring and engagement ring ensemble?

A. Yes.

Q. Are those identical with the products that you sell under the trade-name "Wed-Lok"?

A. Yes, sir.

Q. What was your first impression when you first saw the advertisement advertising the wedding and engagement ring ensemble under the trade-name "Feature-Lok"?

Mr. Naylor: That is objected to unless you explain what you mean by the word "impression." Impression as to [20] what?

Mr. Hursh: I am asking the witness what first came to his mind when he read the advertisement—what thought came to his mind with respect to the trade-mark "Feature-Lok."

Mr. Naylor: That is objected to as leading.

Q. Will you answer the question?

Plaintiff's Exhibit M3—(Continued)

(Deposition of Phil Kleiger.)

A. Yes. Well, the word "Lok" was just imbedded in the back of my mind whenever I saw it—that is, in connection with any rings—and naturally made me think of Granat, being that I have handled the Wed-Lok rings for a good many years, and when I first saw the advertising on this Feature-Lok ring—I believe it was in one of the trade journals—Feature rings—I was under the impression it was one of the other features of Granat. Of course, I have always associated the word "Lok" with the Granat rings.

Q. In your use of the trade-mark "Wed-Lok" and the sale of ring ensembles under the trade-mark "Wed-Lok," did you consider the word "Lok" to be a dominant part of the trade-mark?

Mr. Naylor: That is objected to as calling for the opinion and conclusion of this witness, usurping the power of the Judge to decide ultimately the issues of this case.

A. Yes, sir.

Q. Have many customers entered your store and asked to [21] see Wed-Lok rings?

A. Yes, sir.

Q. How often has that occurred?

A. Quite often.

Mr. Hursh: That is all the direct examination.

Cross-Examination

By Mr. Naylor:

Q. The word "Feature" did not suggest any-

Plaintiff's Exhibit M3—(Continued)

(Deposition of Phil Kleiger.)

thing about "Granat" when you saw it in the advertisement, did it, Mr. Kleiger?

A. Not the word "Feature."

Q. It was solely the word "Lok"—

A. "Lok."

Q. —that led you to believe that it had something to do with Granat?

A. That is right.

Q. Is Granat the only concern you know of which uses the word "Lok" as a part of the trade-name?

A. No. I know of a number of concerns at this particular time that use the word "Lok"; that is, through trade journals that I came across.

Q. Could you name a few of them?

A. Well, Miracle-Lok. I saw one, Cardinal-Lok. There is a Life-Lok.

Q. And you saw those in trade journals? [22]

A. Yes, sir.

Q. About when, sir? A. Pardon?

Q. About when did you see those?

A. Well, I glanced at the January—I am sure it was the January issue, or the February issue.

Mr. Hursh: That is, of this year?

The Witness: Yes.

Q. When did you first see the advertisement of Feature-Lok?

A. I can't say exactly. Approximately about a year ago.

Plaintiff's Exhibit M3—(Continued)
(Deposition of Phil Kleiger.)

Q. Now, when you saw "Miracle-Lok," did you think that was a Granat product?

A. No, I didn't think any of the rest of them were Granat, because they came out much later than Feature-Lok, which I believe was the first one that I came across, soon after Wed-Lok had been produced.

Q. Now, why was it, when you saw Miracle-Lok, that you wouldn't think of Granat Brothers as you had thought of Granat Brothers when you saw Feature-Lok?

A. For the simple reason that later on I found and came to the conclusion that Feature-Lok wasn't a Granat product, and naturally there were others that were coming out after that, which wouldn't exactly put it in my mind that it was a Granat product. [23]

Q. When did you make this finding that Feature-Lok was not a Granat product, as you say?

A. When did I make the finding?

Q. Yes.

A. I didn't make the finding until—some time after I saw the ad I was under that impression. Now, there is Kiger Brothers, at Kansas City, that I think at some time handled the Granat products—that is, they were jobbers and the Granat products went through them, and I was under the impression it was just another Granat product being

Plaintiff's Exhibit M3—(Continued)

(Deposition of Phil Kleiger.)

released through another channel when I saw the Feature-Lok advertised.

Q. In other words, you were under the impression that Granat Brothers were putting out Feature-Lok as a competitive ring to Wed-Lok?

A. To go through another channel, yes. At first I was under that impression.

Q. And when did you learn to the contrary?

A. I can't say as to when. There were salesmen coming through that came into the store and in our conversations I learned it.

Q. Now, when you saw Marvel-Lok, did you get the impression that that was a Granat product also?

A. I saw that yesterday for the first time, that I came across it—that is, in the February Journal; and I also saw Miracle-Lok for the first time in the February issue of the [24] Jewelers Circular.

Q. What impression did you get when you saw Miracle-Lok and Marvel-Lok?

A. That it was just a competitive item.

Q. Competitive of what?

A. With the Granat.

Q. The Granat Wed-Lok?

A. The Granat Wed-Lok, yes.

Q. And with Life-Lok did you get the same impression?

Plaintiff's Exhibit M3—(Continued)

(Deposition of Phil Kleiger.)

A. That it was another competitive item.

Q. In your radio advertising of Wed-Lok rings, as you read portions of the scripts, I got the impression that you repeatedly referred to the fact that the rings locked together. That is true, is it not?

A. Yes, they locked together.

Q. And then the expression was, a tiny gesture locks or joins them together; is that right?

A. Yes, they click.

Q. What is the mechanical means that is employed to lock Wed-Lok rings together?

A. I don't quite understand the question.

Q. What kind of lock do they use?

A. Well, I believe in the Wed-Lok there is a little prong on the wedding ring that snaps into the engagement ring. [25]

Q. It is a male and female lock, is it?

A. Yes, a male and female lock.

Q. And they click together, as you say in your radio script?

A. That is right.

Q. The word "lock," then, actually means what it says, that they lock together, doesn't it?

A. That is right.

Q. Wouldn't that be an apt description of it—two rings that lock together?

A. Regardless of as to how they are put together, they lock together, yes.

Q. That would be true, would it not, that they locked against relative movement?

Plaintiff's Exhibit M3—(Continued)
(Deposition of Phil Kleiger.)

A. If they snapped together, I would say they are locked.

Q. "Lock" would be a proper description of that, would it not? A. I think so.

Q. Have you in your store handled the Forstner line of products? A. Some, yes, sir.

Q. Do you handle their watch bands?

A. Yes.

Q. Their watch bracelets? A. Yes.

Q. Has it ever come to your attention that they use the [26] trade-mark "Kuik-Lok" on those chains?

A. I have never noticed that before, no.

Q. You never paid any attention to that?

A. No.

Q. Do you handle the Gemex line of products?

A. No, sir.

Q. Have those products ever come to your attention? A. No, sir.

Q. Have you ever heard of the Gem-Lok line of jewelry products? A. No, sir.

Q. You mentioned that business is done by you with Granat Brothers. Actually, it is done with Granat Manufacturers, isn't it?

A. Just what the connections are there I don't know. Frankly, I don't know whether it is Granat Manufacturers or Granat Brothers. We have done business with them under La Giacobbi. As to

Plaintiff's Exhibit M3—(Continued)

(Deposition of Phil Kleiger.)

whether it is Granat Brothers or Granat Manufacturers, I don't know. I know they changed their name since Mr. La Giacobbi has passed away; I am pretty sure.

Q. You have done business with Mr. Weinroth in that company, have you not? A. Yes, sir.

Q. In your advertising of Wed-Lok rings, do you get assistance from Granat? [27]

A. That is right, advertising materials.

Q. Do you get any allowances? A. No.

Q. Do you get any scripts? Do they supply you with radio scripts?

A. No. Our advertising people obtained the copy from Granat ads. Some was their original copy.

Q. For your newspaper advertising, they supply you with mats, don't they? A. Yes.

Q. That has always been true, has it not?

A. That is right.

Q. Are you the exclusive distributor for Wed-Loks in Denver? A. No, sir.

Q. Who else has them?

A. Well, I think Frumess has them.

Q. How do you spell that?

A. F-r-u-m-e-s-s.

Q. Is there anybody else?

A. Frumess is all I know of.

Q. Did you at one time have the exclusive distribution of Wed-Loks in Denver?

Plaintiff's Exhibit M3—(Continued)
(Deposition of Phil Kleiger.)

A. We never had the exclusive distribution of Granat [28] products. I thought I did at one time.

Q. Will you take a look at Plaintiff's Exhibit 14 on this deposition, the radio script of September 1, 1947?

A. It has the word "exclusive." I remember that. I thought I had it at that time, was the reason, but I found that Frumess got it at the same time. In September it is possible that I had the exclusive at that time, I don't know.

Q. The words in there are "On exclusive display," aren't they,—

A. That is right.

Q. —in Plaintiff's Exhibit 14?

A. Yes, sir. At that time I thought that I did have it exclusive, and it might be that Frumess got it soon after that, although I was under the impression at that time that I did have the exclusive.

Q. In one of the scripts the expression was used, "Priced for any pocket book," and when you were asked by Mr. Hursh what the price range was I think you started off at \$150, did you not?

A. Yes.

Q. Now, what is the practice in Denver with respect to mark-up, over and above wholesale cost?

A. There is no regular, standard setup with anybody as to the standard. Some were Keystone and some were 40 per cent over cost. There is no regular, set standard. If question is pertaining to

Plaintiff's Exhibit M3—(Continued)

(Deposition of Phil Kleiger.)

Wed-Lok the cost was Keystone. [29]

Q. Let us take a ring ensemble sold by you at a retail price of \$150. What would you pay Granat Brothers for that ensemble at wholesale?

A. Well, in the lower-price merchandise I didn't handle Granat Brothers merchandise. It was the higher-price units that I always handled. Don't recollect above answer. Answer is \$75.00.

Q. Well, you had one at \$165, did you not?

A. Yes, tax included.

Q. And \$15 of that was federal tax?

A. No, I don't think so. It might be on that particular item it was \$150 set advertised at \$165.00 tax included.

Q. Let's stick to the price at which you advertised some of these Wed-Loks. I think it was repeatedly remarked that the price was \$165, was it not? A. \$165.

Q. That was a Wed-Lok ring ensemble?

A. That was a Wed-Lok ring ensemble.

Q. What was the wholesale price that you paid Granat for that particular ensemble?

A. That I can't say. If that was a \$150—I am pretty sure it was \$75.

Q. \$75?

A. That was the \$150-ensemble, and it sold at \$165, which [30] included the tax.

Q. Federal tax? A. Yes.

Plaintiff's Exhibit M3—(Continued)
(Deposition of Phil Kleiger.)

Q. Was that ensemble of Granat intended to sell or listed at retail for \$200?

A. No. They had various prices. There were some \$150, some at \$200, some at \$250, and on up.

Q. I don't think it has been mentioned here what your connection is with Kortz Jewelers.

A. My connection is partner, half owner of Kortz Jewelry Company.

Q. Kortz Jewelry Company?

A. Kortz Jewelry Company.

Q. Who is the other partner?

A. Harry Kortz.

Q. I think earlier in your testimony you mentioned that you had knowledge of Granat Brothers Wed-Lok line of goods for twelve or thirteen years; is that correct? A. That is right.

Q. How long have you personally handled Wed-Lok rings?

A. I would say around twenty years or better.

Q. Wed-Lok rings?

A. Wed-Lok rings, no. Granat rings.

Q. I am speaking of Wed-Lok.

A. My memory doesn't serve me so well to go back that [31] far, but I would say around about twelve years, or thereabouts, that we have had an ensemble that came through under the name of Wed-Lok.

Q. Did you handle that ring? A. Yes, sir.

Plaintiff's Exhibit M 3—(Continued)

(Deposition of Phil Kleiger.)

Q. Now, you mentioned that there were no purchases in the war time.

A. No, there were purchases in war time, but I don't remember of any Wed-Loks.

Q. I am speaking of Wed-Lok. A. No.

Q. What was the war time period during which you could not purchase the Wed-Lok rings?

A. I would say around 1941, and thereabouts.

Q. And that ran approximately to May, 1947, did it not?

A. Until the last Wed-Loks came through.

Q. To refresh your recollection on that, I note that your first advertisement of Wed-Lok rings after the war appears to have been Plaintiff's Exhibit 4, August 4, 1947. Would that be about the time? A. The first which?

Q. The first radio advertisement of Wed-Lok rings.

A. Well, I don't know as to the dates. I didn't follow that.

Q. Well, I take it that you were unable to find an earlier [32] radio script than August 4, 1947; is that correct?

A. That I don't know, because there were changes in advertising agencies before these people took over, and that I can't say.

Q. Your present agency is Neimann?

A. No, sir. Caron.

Q. And they are here in Denver?

Plaintiff's Exhibit M 3—(Continued)

(Deposition of Phil Kleiger.)

A. Yes, sir.

Q. Neimann was your first one?

A. No, Neimann was my second.

Q. Neimann preceded Caron, I should say.

A. No. Raymond Keane came in there first. Neimann took over that agency. And then after Neimann I had a party by the name of Brill Agency.

Q. They are also in Denver?

A. Yes, sir. And at present I have Caron. They are my present advertising people.

Q. For the purpose of giving your testimony here, did you check with Neimann and Brill in an effort to locate advertising material which they had placed for you pertaining to Wed-Lok?

A. That is right, yes.

Q. And they were not able to give you any help—

A. No, sir.

Q. —other than what you produced? [33]

A. Neimann helped this morning, and Brill with the other. And my last one—I contacted them and they said all the copies of my advertising were turned over to me when used—that is Caron. He said he looked through them to see if he had any he hadn't turned over to me. And I didn't retain any copies after they were broadcast or run in the press.

Q. Who first approached you with reference to giving your deposition this morning?

Plaintiff's Exhibit M 3—(Continued)

(Deposition of Phil Kleiger.)

Q. Who first approached me?

Q. Yes. A. Well, a Granat salesman.

Q. What is his name? A. Pinkston.

Q. When did he contact you?

A. When he came back to Denver, I would say about two weeks ago. About that. I can't say the exact date. It is about three weeks ago, or two.

Q. Did you have one conversation with him, or more than one?

A. The extent of all of the conversation was as to whether I would have any objections to giving a deposition to the Granat counsel if he would come in, and I said no—that is, pertaining to this suit.

Q. What did he tell you he was looking for in the way of evidence?

A. He didn't tell me. We didn't discuss anything as to [34] what he was looking for or anything pertaining to the deposition. There was no discussion at all.

Q. Didn't he mention that he was looking for proof as to Wed-Lok? A. No, sir.

Q. Well, when did you first gain knowledge of the fact that you would be interrogated concerning Wed-Lok? A. At that time.

Q. Well, that is what I was getting at.

A. Yes, at that time he said they had a suit against Feature Lok and if I would have any objections to giving this deposition.

Q. Concerning Wed-Lok?

Plaintiff's Exhibit M 3—(Continued)

(Deposition of Phil Kleiger.)

A. Concerning this Wed-Lok, yes.

Q. Now, did Mr. Pinkston mention Feature Lok in that conversation? A. He did, yes.

Q. What did he say about it?

A. That was the extent of the conversation, this Wed-Lok against Feature-Lok, pertaining to the patents. That is as far as the conversation went.

Mr. Hursh: Was it patents or trade-marks, Mr. Kleiger?

The Witness: Well, it would be trade-marks.

Q. Did Mr. Pinkston identify Feature Ring Company as the manufacturer of Feature-Lok?

A. There was no discussion on that. [35]

Q. No discussion? A. No, sir.

Q. Did you advise Mr. Pinkston at that time that you knew about Feature-Lok?

A. No, sir.

Q. You had no conversation with him whatever about that? A. No conversation whatsoever.

Q. Who next from Granat contacted you concerning the giving of this deposition?

A. I received a wire from Mr. Hursh's office as to whether I would be available for the taking of the deposition this morning.

Q. This morning? A. Yes.

Q. When did you first see Mr. Hursh?

A. Last night.

Q. Last night? A. Yes.

Plaintiff's Exhibit M 3—(Continued)

(Deposition of Phil Kleiger.)

Q. Mr. Hursh acquainted you, of course, with what was at issue in this case, did he not?

A. Yes.

Q. He mentioned Feature-Lok and Wed-Lok?

A. Well, I don't recollect any discussion about Feature-Lok, no.

Q. Nothing was said about it? [36]

A. I don't remember any discussion about Feature-Lok.

Q. (By Mr. Hursh): Well, we reviewed the testimony you were going to give this morning, in that conversation we had last night?

A. Yes; that is, pertaining to Wed-Lok.

Q. Yes. Pertaining to the whole deposition you were going to give this morning. That was reviewed with you? A. That is right.

Q. (By Mr. Naylor): Did you receive any merchandise at all from Granat Brothers in the war time period, 1941 to 1947? A. Yes, sir.

Q. What did you receive?

A. I received wedding rings, mountings, diamond rings.

Q. You did not receive any Wed-Loks, though, did you? A. No, never did.

Q. Between 1941 and 1947?

A. As to when the Wed-Loks came in—that is, the new Wed-Loks—I don't know the exact date.

Q. I take it, from what you say, that you did not advertise Wed-Loks during the war?

Plaintiff's Exhibit M 3—(Continued)
(Deposition of Phil Kleiger.)

A. No, I did not, not until I got my shipment.

Q. Until you got the first shipment after the war? [37]

A. That is right; that is, when the new Wed-Loks were released.

Q. Did you ever hear of Strauss and Strauss, a jewelry concern in New Jersey? A. No, sir.

Q. Did it ever come to your attention that they were using the trade-mark "W-e-d-l-o-c-k?"

A. No, sir.

Q. Were you ever aware of the fact that in the year 1936 Granat Brothers discontinued the use of "Wed-Lok" on wedding rings? A. No, sir.

Q. Do you recall a communication or any communication from Granat Brothers advising you or your organization that the term "W-e-d-d-e-d" would be substituted for the term Wed-Lok?

A. No, sir.

Q. Do you have any personal knowledge as to when Granat Brothers first used the term Wed-Lok? A. No, sir.

Mr. Naylor: I think that is all. [38]

Redirect Examination

By Mr. Hursh:

Q. When you saw the word "Feature" used in connection with the word "Lok" to describe a ring ensemble, whose product did you think it was?

A. Granat Brothers.

Plaintiff's Exhibit M 3—(Continued)

(Deposition of Phil Kleiger.)

Q. You were confused the first time you saw the word "Feature-Lok" used in the ring ensembles?

A. Yes, sir.

Q. You stated that you first saw the use of the trade-marks "Life-Lok" and "Miracle-Lok" in the February issue of the jewelers trade journal?

A. Not Life-Lok. I had seen that the latter part of October, I think, or November, of 1948. It was Cardinal-Lock and Miracle-Lok that I had seen in the February Jewelers Circular.

Q. At that time you had established to your own satisfaction that Feature-Lok was not a Granat Brothers product, had you?

A. At which time?

Q. The time you saw these other trade-marks employing the word "Lok?"

A. That is right, yes.

Q. Now, would you say that to you "Lok" describes the rings of the Wed-Lok ensemble, or does it describe some [39] particular feature of those rings?

A. Yes, I would say it describes the feature of the rings.

Q. You still call the individual wedding ring a Wed-Lok ring, do you not? A. Yes, sir.

Q. And you call the engagement ring a Wed-Lok ring?

A. No, that is the engagement ring,—it is a part of the Wed-Lok combination.

Plaintiff's Exhibit M 3—(Continued)
(Deposition of Phil Kleiger.)

Q. So far as you are concerned, they are both Wed-Lok rings, are they not?

A. Both of them, yes,—both rings.

Q. During the war period did you have difficulty in obtaining other types of merchandise to sell in your store? A. I did, yes.

Q. Did you have difficulty in securing Hamilton watches? A. Yes.

Q. And Elgin watches? A. Yes, sir.

Q. And various types of silverware, such as Rogers? A. Yes, sir.

Mr. Hursh: That is all the redirect. [40]

Recross-Examination

By Mr. Naylor:

Q. It was solely the word "Lok" in "Feature-Lok" that induced this confusion, as you call it, as to common origin in Granat Brothers?

A. What do you mean, "confusion?" I don't quite understand.

Q. Well, I don't quite understand it either, but that is the question you were asked, and you answered Yes, you were confused when you saw Feature-Lok. What was the confusion?

A. Well, I didn't use "confusion." I was under the impression that it was another Granat product when I first saw Feature-Lok advertised in the trade journal.

Q. You were under the impression?

A. I was under the impression.

Plaintiff's Exhibit M 3—(Continued)

(Deposition of Phil Kleiger.)

Q. And the impression lasted how long, Mr. Kleiger?

A. That I can't say, how long. When the salesmen came through. I really didn't give it a thought, as far as that is concerned.

Q. You didn't make any inquiry, did you?

A. I didn't make any inquiries, only of the salesmen of other lines that came through.

Q. And so this impression lasted until you had occasion to ask somebody about it; is that correct?

A. That is right.

Q. But the word "Feature" in the expression "Feature-Lok" [41] had no significance to you at all, did it? A. No, sir.

Q. You display your merchandise at your store, do you? A. Yes, sir.

Q. I noticed when I was there this morning that you had a display of such products as Gruen watches, several of the well-known fountain pens, and quite an extensive display of rings. How do you display the rings that you sell at your store?

A. How do I display them?

Q. Yes, sir.

A. You mean in the show windows?

Q. Yes, sir.

A. Well, for some time I have been displaying—that is, for instance, with the Wed-Loks there have been trays come through with the Wed-Lok sign—

Plaintiff's Exhibit M 3—(Continued)

(Deposition of Phil Kleiger.)

I don't know the exact wording, whether it is "Wed-Lok by Granat" or "Threesome," but it is a little fixture that sets right in the window, and unfortunately the card we received became a little abused and shopworn, is the reason I haven't used it for a week or two—I don't know how long. But up until recently there was a background put out—illuminated background — mechanical background — that shows Granat Wed-Loks, which was defective. That was returned.

Q. At present there is no display of Wed-Lok in your [42] store, is there?

A. There is a display of Wed-Lok, yes. I have Wed-Loks in there, but not with that sign.

Q. With that mark applied?

A. —with that little—it was a tray in a nice worded sign, but that isn't in there now, but I do have Wed-Loks in the window now. With my own printed signs.

Q. Is there anything in your window that tells the public, as the public would see the articles through the window glass, that they are Wed-Loks?

A. I think there are little signs there that state the Wed-Lok Threesome.

Q. Are you sure about that?

A. I am not sure, no. If there isn't, that is due to negligence on the part of my window man.

Q. Well, I made a rather careful examination when I was at your store this morning, and I was

Plaintiff's Exhibit M 3—(Continued)

(Deposition of Phil Kleiger.)

unable to find the word "Wed-Lok" in any of the windows fronting on Sixteenth Street, and if I am mistaken, I wish you would correct me on this record by full description of what there is.

Mr. Hursh: I made the same examination, Mr. Naylor, and I didn't find a Wed-Lok ring mentioned by the name Wed-Lok; although there were a number of ring ensembles in that window, I didn't find the trade-mark "Wed-Lok" applied to those rings, on my examination of the window this morning.

Mr. Naylor: So that an observer could read it as such; is that correct?

Mr. Hursh: That is true; on Sixteenth Street I didn't find identification of the trade-mark "Wed-Lok."

Q. (By Mr. Hursh): But many times you do have such identifications in your window, do you not, Mr. Kleiger?

A. Yes, at all times, as I say, up until recently, when this beautifully designed card, due to the use of it, as I say, became too shopworn to put into the window, that is with the ring display trays which we have received from Granat.

Q. Do you take the diamond rings out of your window every day, in the evening, at night?

A. I don't. My help does.

Q. That is what I mean.

A. I have a window man who has full charge of the windows, and in this particular instance I was

Plaintiff's Exhibit M 3—(Continued)

(Deposition of Phil Kleiger.)

unaware of the fact that there was no fine little card stating Wed-Lok Threesome.

Q. But he takes the diamond rings out of the window at night-time and places them in a safe place, and then replaces the rings in your window every day? A. He what?

Q. He replaces that material in your window every day; [44] in other words, the trays, every day?

A. No, but once a week he changes the window around.

Q. (By Mr. Naylor): Have you had any boxes for Threesomes come through with the word "Wed-Lok" on the box anywhere?

A. I have had boxes come through for Threesomes, but whether they had the word "Wed-Lok" on them I am not sure about that, although in my window I have had my man make up Wed-Lok Threesomes, in which there is a matching gent's wedding ring, which I put into the same box and had a sign made up, "Wed-Lok Threesome."

Q. Are you familiar with the little pink box that Granat puts out to display on its merchandise? A. No.

Q. Just to clear the record on one point, Mr. Kleiger, there were sixteen radio scripts offered here in which Wed-Loks were mentioned. That did not comprise all of your radio advertising, did it?—these selected scripts?

Plaintiff's Exhibit M 3—(Continued)

(Deposition of Phil Kleiger.)

A. Well, at that time I was on another station. I didn't see any of their script there.

Q. Maybe I didn't make myself clear. Take, for example, the sheets of script contained in Plaintiff's Exhibits 5, 6, 7, 8, 9, 10, 11, etc., there are other scripts in that folder than those which were tagged, are there not? [45]

A. Well, there is just what you have there. They weren't all tagged. That is the complete script of the show. Now, they are fifteen-minute shows, you see, and that is the complete script. You take any date there, all this went in on that date there; there is nothing removed from there.

Q. What I am getting at is this: not every script in this folder mentions Wed-Lok?

A. Oh, no, not every one.

Q. Not every radio program that you had in this period mentioned Wed-Lok?

A. No, not every one.

Mr. Naylor: That is all.

(Witness excused.)

/s/ PHIL KLEIGER.

Subscribed and sworn to before me this 15th day of February, 1949.

My commission expires April 7, 1949.

[Seal] /s/ HAROLD N. WOODMAN,
Notary Public.

State of Colorado,
City and County of Denver—ss.

I, Harold N. Woodman, a notary public within and for the City and County of Denver, State of Colorado, do hereby certify:

That prior to being examined the witness whose signature is affixed to the foregoing deposition was sworn by me to testify the truth, the whole truth, and nothing but the truth;

That said deposition was taken down by me in shorthand at the time and place therein stated and was thereafter reduced to typewriting under my direction;

That when reduced to typewriting it was read by the said witness, who was duly informed by me of the right to make such corrections as might be necessary to render the same true and correct, and the same was thereupon signed by the said witness in my presence.

I further certify that I am not counsel or attorney for either of the parties hereto or in any way interested in the event of this cause, and that I am not related to either of the parties thereto.

Witness my hand and seal this 15th day of Feb., 1949.

[Seal] /s/ HAROLD N. WOODMAN,
Notary Public.

[Endorsed]: Filed Mar. 16, 1949.

[Title of Court and Cause.]

PLAINTIFF'S EXHIBIT N-3

Deposition of Arthur A. Navarro

The deposition of Arthur A. Navarro, a witness on the part of the Plaintiff, pursuant to Notice of Taking Depositions hereto annexed, and pursuant to the Rules of Civil Procedure for District Courts of the United States, before Earl W. Radford, a Notary Public of the County of Du Page, State of Illinois, acting as a Notary Public within and for the County of Kane, State of Illinois, under and by virtue of the provisions of Chapter 99, Paragraph 10, Illinois Revised Statutes, 1945, commencing at the hour of 10:00 o'clock in the forenoon, on Friday, February 11, A.D. 1949, at 11 North Broadway, Aurora, Illinois.

Appearances:

MELLIN AND HANSCOM, By
JACK E. HURSH, Esq.,

For the Plaintiff in each of the above-
entitled causes.

NAYLOR AND LASSAGNE,

JOHN VAUGHAN GRONER, Esq.,
WILLIAM J. O'HEARN, JR., Esq., By
WILLIAM J. O'HEARN, JR., Esq.,

For the Defendants and Intervening
Defendant in each of the above-
entitled causes. [2]

Plaintiff's Exhibit N-3—(Continued)

Oath of Shorthand Reporter

I do solemnly swear that I will well and truly, faithfully, accurately and impartially report in shorthand the proceedings had upon the taking of the deposition herein, pursuant to Notice of Taking Depositions hereto annexed, and pursuant to the Rules of Civil Procedure for District Courts of the United States, and prepare a full, true and correct transcript of my shorthand notes so made as aforesaid, so help me God.

/s/ EARL W. RADFORD.

Subscribed and sworn to before me, this 11th day of February, A.D. 1949.

[Seal] /s/ JOSEPH S. GUYETTE,
Notary Public, Cook County,
Illinois.

My Commission Expires May 31, 1951. [7]

PROCEEDINGS

Mr. Hursh: It is stipulated that we can attach a copy of the Notice with the transcript of the deposition.

Mr. O'Hearn: Yes.

Mr. Hursh: And it is stipulated that Mr. Radford, the Reporter and Notary Public, may take down the deposition in shorthand, and transcribe it into typewriting, the original of said transcript to be sent to the Clerk of the Court, with carbon copies for Counsel.

Plaintiff's Exhibit N-3—(Continued)

It is also stipulated that we reserve all objections to questions, except as to the form of the question.

Mr. O'Hearn: It is so stipulated. [8]

ARTHUR A. NAVARRO

of lawful age, having been by me, the said Earl W. Radford, as Notary Public as aforesaid, first duly cautioned and sworn to tell the truth, the whole truth and nothing but the truth, in the matter of controversy aforesaid, was examined and did thereupon depose, testify and say as follows, viz.:

Direct Examination

By Mr. Hursh:

Q. Will you state your name?

A. Arthur A. Navarro.

Q. And where do you reside?

A. 250 Sullivan Road, Aurora, Illinois.

Q. What is your occupation? A. Jeweler.

Q. How long have you been engaged in the jewelry business? A. About twenty-four years.

Q. Do you know of a firm of manufacturing jewelers by the name of Granat Bros.?

A. Yes, sir.

Q. Do you know where that firm is located?

A. In San Francisco. [9]

Q. How long have you known of Granat Bros.?

A. I have known of them for quite a while, but I have done business with them for about four or five years, I think.

Q. Could you tell us just how long you have

Plaintiff's Exhibit N-3—(Continued)
(Deposition of Arthur A. Navarro.)

known of them, when you heard of them first, approximately?

A. I heard of Granat Bros., I should say, maybe fifteen years ago.

Q. And do you handle Granat Bros. products?

A. Yes, I do.

Q. Do you know of a wedding ring ensemble that is sold under the trade-mark "Wed-Lok"?

A. Yes, I do.

Q. Who produces that wedding ring ensemble?

A. Granat Bros.

Q. How long have you known of the trade-mark "Wed-Lok", as applied to wedding ring and engagement ring ensembles?

A. I think about three and a half years, maybe.

Q. Do you know the products that Granat Bros. manufactures and sells?

A. Well, we handle their diamond goods, their Wed-Lok rings, we handle their mountings and wedding bands. [10]

Q. Could you state the quality of the product sold by Granat Bros.?

A. I would say it is the finest.

Q. Do you know what reputation Granat Bros. has in the Aurora area?

A. I would say they have a very fine reputation, for the merchandise that we sell.

Q. When you hear the word "Wed-Lok", spelled either "L-o-k" or "L-o-c-k", as applied to wedding

Plaintiff's Exhibit N-3—(Continued)

(Deposition of Arthur A. Navarro.)

ring or engagement ring ensembles, with whose products do you identify them?

A. Immediately I would think of Granat Bros.

Q. What would you say the quality of the Wed-Lok rings that you sell is? A. Top quality.

Q. How long have you sold these wedding rings under the trade-mark "Wed-Lok"?

A. I don't know exactly. Maybe three years, or so.

Q. Do you advertise your sale of Wed-Lok rings? A. Oh, yes.

Q. What media do you use to advertise Wed-Lok rings in this area?

A. Newspaper, direct mail, and on the radio.

Q. How often do you advertise in the newspapers [11] the Wed-Lok ring ensembles?

A. Well, I think about three or four times a month, about three or four or five times a month, I will say, total.

Q. Have you any examples of the ads that you place in the papers? A. Yes, I have.

Q. Will you produce them, please?

(Witness producing advertisements.)

Q. You have produced four advertisements.

A. Have I got to get them all? It will take a long time to check all this stuff up.

Mr. Hursh: We will not have time to secure them all, unless counsel will stipulate that the other

Plaintiff's Exhibit N-3—(Continued)

(Deposition of Arthur A. Navarro.)

advertisements may be added as exhibits to the deposition.

Mr. O'Hearn: Yes.

Mr. Hursh: Photostatic copies of those advertisements.

Mr. O'Hearn: All, from the very beginning? Couldn't we pick out a few that would be typical?

Mr. Hursh: He has a few here that are typical. Suppose we place these typical [12] ones in, and then he can testify as to the frequency of the placement of advertisements in the local newspapers?

Mr. O'Hearn: I am agreeable to that.

Q. (By Mr. Hursh): The first advertisement, in order of date, is one dated Wednesday, July 28th.

A. That is the Aurora Beacon News. There are a lot of them in different newspapers in small cities.

Q. What paper was this advertisement of Wednesday, July 28th, run in?

A. The Aurora Beacon News.

Q. What year was that? A. This is 1948.

Mr. Hursh: I will introduce this advertisement as Exhibit 1 to this deposition.

(The advertisement referred to, so offered in evidence, was marked Deposition Exhibit No. 1, and the same is attached to and made a part of this deposition.)

Q. (By Mr. Hursh): I show you another advertisement, showing the use of the trade-mark

Plaintiff's Exhibit N-3—(Continued)

(Deposition of Arthur A. Navarro.)

“Wed-Lok”, and ask you if you [13] can identify that advertisement. (Handing advertisement to the witness.) A. Yes, I can identify it.

Q. What paper was that run in?

A. Aurora Beacon News.

Q. And what date was it placed in the paper?

A. May 14, 1948.

Mr. Hursh: I will introduce that in evidence as Exhibit 2.

(The advertisement referred to, so offered in evidence, was marked Deposition Exhibit No. 2, and the same is attached to and made a part of this deposition.)

Q. (By Mr. Hursh): I show you another advertisement, and ask you if you can identify that advertisement. (Handing advertisement to the witness.) A. I can.

Q. What date was that advertisement run?

A. January 11, 1948.

Q. In what paper?

A. The Aurora Beacon News.

Mr. Hursh: I will introduce that as [14] Exhibit No. 3.

(The advertisement referred to, so offered in evidence, was marked Deposition Exhibit No. 3, and the same is attached to and made a part of this deposition.)

Plaintiff's Exhibit N-3—(Continued)
(Deposition of Arthur A. Navarro.)

Q. (By Mr. Hursh): I show you another advertisement. Can you identify that advertisement? (Handing advertisement to the witness.)

A. Yes. Friday, January 2nd.

Q. I see that the date, 1947, is scratched out. Evidently they forgot to change the date. What date is that? A. 1948.

Q. You recollect that advertisement was placed in the paper in 1948? A. Yes, sir.

Mr. Hursh: I will introduce that as Exhibit No. 4.

(The advertisement referred to, so offered in evidence, was marked Deposition Exhibit No. 4, and the same is attached to and made a part of this deposition.) [15]

Q. (By Mr. Hursh): Are those all of the advertisements that you have been able to secure at the present moment?

A. Right at this moment, but we can get the others, if you have to have them.

Q. And you have advertised on an average of three or four times a month in the local papers?

A. I would say so. Ever since we have had it, we have been advertising.

Q. What papers, outside of the City of Aurora, do you advertise in?

A. We advertise in Naperville, Illinois, we advertise in Organized Farmer, the Aurora Economist, the Aurora Beacon News. The Organized Farmer

Plaintiff's Exhibit N-3—(Continued)

(Deposition of Arthur A. Navarro.)

is in Naperville. We advertise in the Kendall County Record, the DeKalb Sun, and the College Chronicle, that is Naperville.

Q. I would like to secure all of the advertisements, if I possibly could.

A. That is going to be a job.

Q. What I would like you to do, Mr. Navarro, is request the newspapers to take a photostat of your advertisements, showing the entire page that your advertisement appears on, so that we will have the [16] date, and the name of the paper.

A. Just give me a minute.

Q. We want either an original copy of the page, or a photostat, and, if you will, send them to Mr. Radford.

A. All right. I will do that.

Q. You have produced a proof of an advertisement. Could you identify that proof?

A. Yes. That is yesterday's ad in the Aurora Beacon News. In fact, I think this is being run now, the same ad, three times a week, for the past four or five weeks.

Mr. Hursh: I will introduce that in evidence as Exhibit 5.

(The proof of the advertisement referred to, so offered in evidence, was marked Deposition Exhibit No. 5, and the same is attached to and made a part of this deposition.)

Q. (By Mr. Hursh): You have produced an-

Plaintiff's Exhibit N-3—(Continued)

(Deposition of Arthur A. Navarro.)

other advertisement of the Aurora Economist, dated February 3rd, showing an ad appearing on page 3. Will you identify that advertisement? [17]

A. Yes, sir.

Q. That is the advertisement of your store?

A. Yes, sir.

Mr. Hursh: I will introduce that in evidence as Exhibit 6.

(The advertisement referred to, so offered in evidence, was marked Deposition Exhibit No. 6, and the same is attached to and made a part of this deposition.)

Q. (By Mr. Hursh): You also advertise by direct mail? A. Yes, sir.

Q. You have produced two pamphlets.' I will ask you to identify the pamphlet I hand you, and tell us when that was sent out, and under what circumstances.

A. This is a mailing piece. This was sent out in 1947.

Q. Does this particular pamphlet identify your store? A. Yes, sir.

Q. And does it also advertise your sale of Wed-Lok [18] rings?

A. Yes, sir. That is right on the back.

Mr. Hursh: I will introduce that in evidence as Exhibit 7.

Plaintiff's Exhibit N-3—(Continued)

(Deposition of Arthur A. Navarro.)

(The pamphlet referred to, so offered in evidence, was marked Deposition Exhibit No. 7, and the same is attached to and made a part of this deposition.)

Q. (By Mr. Hursh): With reference to Exhibit 7, how does this pamphlet come to you? How is it that you have the last page identifying your store and other products that you sell?

A. This is a New York outfit, an advertisement firm, and they make up a book, they come to a fellow like me, and a few more jewelers, and they suggest, and finally make up a book, and leave us the back page to have merchandise that is not in the book. In other words, I want a general line of goods shown, and they give us the back page. I am not sure whether it is extra cost.

Q. How many of these were sent out?

A. Five thousand, maybe 7500. [19]

Q. And they are sent out to various people in the Aurora area?

A. They are sent out to various people in the vicinity, the suburbs, Aurora and vicinity, but to Chicago suburbs we don't send them.

Q. You have also produced a second pamphlet. Can you identify this pamphlet for us?

A. Yes. This is the 1949 catalogue, or whatever you want to call it, December, 1949.

Q. You mean 1948?

A. I mean 1948, yes.

Plaintiff's Exhibit N-3—(Continued)
(Deposition of Arthur A. Navarro.)

Q. I notice on the back page of that catalogue, it identifies your store, and also shows you sell Wed-Lok diamond rings, is that true?

A. That is right, sir.

Q. Was that pamphlet made up in the same manner as the pamphlet, Exhibit 7?

A. Yes, sir.

Mr. Hursh: I will introduce that as Exhibit 8.

(The pamphlet referred to, so offered in evidence, was marked Deposition Exhibit No. 8, and the same is attached to and made a part of this deposition.) [20]

Q. (By Mr. Hursh): Approximately how many of those pamphlets, such as the one identified as Exhibit 8, did you send out?

A. I think it was 5,000, or 7,500.

Q. You state that you advertise over the radio?

A. Yes, sir.

Q. How often does your program come on the air?

A. Ten times a day.

Q. On this program, do you mention Wed-Lok ring ensembles?

A. That is right, I do.

Q. Do you mention them every day?

A. Every day.

Q. Do you have a copy of the script which you employ in your air program?

A. I have. (Witness producing document.)

Q. You have produced a script of your radio program?

A. That is right.

Plaintiff's Exhibit N-3—(Continued)

(Deposition of Arthur A. Navarro.)

Q. It is dated January 21, 1949? A. Yes.

Q. Is that the script that is sent over the air?

A. Yes, that is on now.

Q. How long is this particular script used on your [21] radio program?

A. Until I get out of the lazy mood, and write a new one. They go on for several months.

Q. I notice on the second page you have mentioned Wed-Lok diamond ring ensembles, and for the purpose of convenience, I will read the script into the record, and will you state whether or not it is a correct reading:

"The correct time is Now Courtesy Navarro's The Diamond House. Navarro's are Aurora's exclusive distributor for Wed-Lok Diamond Ring ensembles. The rings that stay upright on your finger in platinum, white gold and yellow gold. Wed-Lok Diamond ensembles start from \$175.00 for both rings. See these genuine Blue White diamonds today at Navarro's the Diamond House, Jewelers and Silversmiths at 11 North Broadway in down town Aurora. Your credit is good at Navarro's, pay as little as \$1.25 weekly."

A. That is right.

Mr. Hursh: We will introduce that in evidence as Exhibit No. 9.

It is stipulated between counsel [22] that Exhibit No. 9 may be photostated, and the original copy of Exhibit 9 returned to Mr. Navarro, and a photo-static copy attached to the deposition.

Plaintiff's Exhibit N-3—(Continued)
(Deposition of Arthur A. Navarro.)

(The original of the document referred to was accordingly marked Deposition Exhibit No. 9, and, by stipulation, a photostatic copy thereof, likewise marked Deposition Exhibit No. 9, is attached to and made a part of this deposition.)

Q. (By Mr. Hursh): How long have you had your radio program? A. Five or six years.

Q. How long have you sold Wed-Lok rings in your store?

A. Three to three and a half years.

Q. When did you first mention the sale of Wed-Lok rings in your stores, on the radio?

A. From the time we first got them.

Q. So that your estimate would be, as I understand it, that for the past approximately three years you have mentioned Wed-Lok rings as being sold from your [23] store?

A. Exclusively from our store.

Q. When the word "lock" is used in conjunction with wedding ring and engagement ring ensembles, whose product do you identify?

Mr. O'Hearn: I would like to object to that question, on the ground that there is no claim here of infringement of a mark "lok" or "lock", disassociated from the word "Wed-Lok".

The Witness: Granat Bros.

Q. (By Mr. Hursh): When you first heard the

Plaintiff's Exhibit N-3—(Continued)

(Deposition of Arthur A. Navarro.)

trade-mark "Feature-Lock" used to identify wedding ring and engagement ring ensembles, with whose product do you identify it?

A. Granat Bros.

Q. In your sale of ring ensembles, under the term "Wed-Lok", would you state that the use of the word "Lok" in the trade-mark was a valuable part of the trade-mark?

A. Well, I would think, to me, the "Lok" is the whole thing, the diamonds, the platinum, the name, and everything, that is how I would associate "Lok".

Q. Do customers come into your store and ask for Wed-Lok ring ensembles by that name?

A. Oh, yes.

Q. How often does that occur?

A. It happens often. It doesn't happen every day, but it happens.

Mr. Hursh: That concludes the direct examination.

Cross-Examination

By Mr. O'Hearn:

Q. Mr. Navarro, how long have you used that radio script, Exhibit 9, in the form in which it exists there?

A. Since the date it is marked.

Q. And that date is January 21, 1949?

A. That is right.

Can I make something plain here? Anything we

Plaintiff's Exhibit N-3—(Continued)

(Deposition of Arthur A. Navarro.)

use on the radio, anything we use on an ad, for instance, if I use it today, the essence of the thing is used all the time. It may be in different form. [25]

Q. You mentioned several other outlying towns that you advertised in the papers. A. Yes.

Q. One, I think, was Naperville?

A. That is right.

Q. What would you say, roughly, was the population of Naperville?

A. About ten thousand.

Q. How about some of the other towns you mentioned, that you advertise in?

A. Ten or fifteen thousand. There are a lot of outlying little cities around.

Q. I understand you to say that you do not advertise in suburban Chicago? A. No.

Q. Are those papers in which you advertise in the small outlying towns weekly papers or monthly papers? A. Weeklies.

Q. How long did you say you have been acquainted with Granat Bros.?

A. I have known Granat Bros. for about fifteen years.

Q. Did you handle any of their goods prior to [26] the war? A. No.

Q. Are you personally acquainted with Mr. Lee Granat? A. No, sir.

Q. Or Joseph Granat? A. No, sir.

Q. You handle other goods manufactured by

Plaintiff's Exhibit N-3—(Continued)

(Deposition of Arthur A. Navarro.)

Plaintiff than the interlocking wedding and engagement ring? A. Yes, sir.

Q. Is the name "Wed-Lok" associated with any of the other Granat products, other than the interlocking rings?

A. No. We use the name "Granat," and we usually tell the people, "This makes the famous Wed-Lok set." We usually tell them that.

Q. The name "Wed-Lok," then, is used to distinguish the interlocking wedding and engagement rings from the other products of Granat Bros.?

A. I don't know exactly what you mean there.

Q. To you, does the name "Wed-Lok" mean the interlocking wedding and engagement rings manufactured by Granat Bros., rather than their entire line of products?

A. I would say that when we talk of Wed-Lok, we tell the customer that Granat Bros. are the finest makers of diamond rings. It takes the whole thing in, as far as I am concerned.

Q. They do not, and you do not advertise any of the other Granat products as Wed-Lok?

A. Granat Bros.

Q. But not Wed-Lok? A. No.

Q. You mentioned that you consider the word "Lok" important, as associated with this interlocking ring. Would you say that it was necessary as a part of the name when applied to a ring of this type in order to distinguish it from other types of rings?

Plaintiff's Exhibit N-3—(Continued)

(Deposition of Arthur A. Navarro.)

A. Well, I can only say the same thing, that "Wed-Lok" to me is Granat Bros. product, not only the name "Wed-Lok" but it is the quality of the merchandise, the mounting, the diamond, and so forth and so on, because in the first place, when we sell Wed-Lok, we immediately tell the customer who Granat Bros. are, the fine products they make, and that we actually feel honored by having the [28] line in the store, and I mean that sincerely.

Q. The word "Lok," in the trade-mark, associated with this type of ring, however, is necessary to distinguish it from other bridal sets. Is that why you state that you consider the word "Lok" important in the name?

A. I would say the whole thing is important, Granat Bros., and Wed-Lok.

Q. Do you know of any other interlocking bridal sets that are put out by other manufacturers under other names, including the word "lock"?

A. Yes, we have had several people in the store.

Q. Who were they, who did they represent?

A. I don't know exactly, but there have been several dealers in here.

Q. Could you mention some of the other names associated with interlocking rings which include the name "lock"?

A. There have been several of them. I don't remember exactly. If you mention some names that

Plaintiff's Exhibit N-3—(Continued)

(Deposition of Arthur A. Navarro.)

you fellows know, I may be able to tell you. We didn't pay any attention to it.

Q. Have you heard of Kin-lock?

A. Yes. [29]

Q. Who is that sold by? Sarkin?

A. I think so.

Q. Have you heard of Duolock?

A. I have.

Q. Have you heard of Gemlock? A. No.

Q. Have you heard of Life-Lok, manufactured by Manne & Son?

A. I think I have heard of that name.

Q. How long have you been familiar with these other names, including the word "lock" as applied to interlocking wedding rings?

A. Oh, the past year, I would say.

Q. You have been selling the Wed-Lok for three and a half years, approximately?

A. Well, I don't know exactly. I could check and look it up. About that time.

Q. Approximately since the end of the war?

A. I could give you the exact date, if you want it. I would have to check it up. I can't remember exactly.

Q. Could you find the date? A. July, '47.

Q. In July of 1947, had you heard of any other companies advertising interlocking wedding rings?

A. No, sir.

Q. You were, therefore, familiar with Granat's

Plaintiff's Exhibit N-3—(Continued)

(Deposition of Arthur A. Navarro.)

use of the word "Wed-Lok," as applied to interlocking wedding rings for approximately a year or more before you became acquainted with other trade-marks using the word "lock"?

A. I wasn't acquainted with it at all until he came into the store and sold it to me.

Mr. O'Hearn: I am afraid you didn't understand the question.

Will you read the question to him, please?

(Last question read by the Reporter.)

The Witness: Yes, sir.

Q. (By Mr. O'Hearn): Would you not say that the name "Wed-Lok," as applied to interlocking wedding and engagement rings, characterizes the function of the rings?

Mr. Hursh: I object to the question, unless the word "function" is defined.

Mr. O'Hearn: I would define the [31] word "function" as the manner in which the interlocking device causes the rings to cling together.

The Witness: I am going to say the same as I answered before, to me "Wed-Lok" is a Granat product, it is the whole business. I buy the ring because of the quality of it, and the make of it, and the high quality goods that it has. That is the actual truth and the fact about it.

Q. (By Mr. O'Hearn): But the name "Wed-Lok" does signify to you the interlocking wedding

Plaintiff's Exhibit N-3—(Continued)

(Deposition of Arthur A. Navarro.)

and engagement rings, as distinguished from Granat's other products?

A. I only identify it with Granat.

Q. Referring to Defendant's Exhibit 1, I read from that:

"Wed-Lok Rings. No need to twist and turn these rings to keep them in position, for wedding band and engagement ring lock together . . ."

Would you say that the name "Wed-Lok" there is used to describe the interlocking wedding ring which is stated in the advertisement to be a [32] wedding band and engagement ring which lock together?

A. I would describe it as a ring in whole, the company's wedding ring, the whole combination, everything combined, the ring, the set.

Q. Would you explain why it is that you say that you consider the word "Lok" to be an important part of the trade-mark "Wed-Lok"?

A. I will say the same thing. To me "Wed-Lok" and "Granat" is one thing, that is the product I am selling.

Q. Don't you think it is necessary, in introducing a product like this to the public, that is, an interlocking wedding and engagement ring, to name it in such a way that it would signify to the public how it is different from other types of wedding and engagement rings?

Plaintiff's Exhibit N-3—(Continued)
(Deposition of Arthur A. Navarro.)

A. We tell them it is a "Wed-Lok," it is a Granat Bros. product. That is what we tell them.

Q. Isn't it necessary to have, as part of the name, something which signifies to the public the distinction between this type of ring and another type of ring?

A. Is it important? That is what it says in the [33] paper. That is the only way we can describe it, as what I have been telling you.

Q. Who first approached you, Mr. Navarro, as to testifying here today?

A. You are both here.

Q. Prior to today.

A. I would say both of you at the same time.

Mr. Hursh: He means, who was the first one, when did you hear about this case, and the fact we wanted you to testify.

The Witness: Yesterday. Well, I got a letter, I think, before.

Q. (By Mr. O'Hearn): When did you get that letter, Mr. Navarro?

Mr. Hursh: Didn't the Granat salesman first contact you with respect to it?

The Witness: Yes. He came in and asked me if I would be willing to testify. Mr. Kamelack, I think it was, wasn't it?

Mr. Hursh: I don't know the name.

The Witness [34] (Continuing): He came in and asked me if I would be willing to testify to this business here, that's all.

Plaintiff's Exhibit N-3—(Continued)

(Deposition of Arthur A. Navarro.)

Q. (By Mr. O'Hearn): Did he explain what the suit was about?

A. I think he told me something about it. I don't remember exactly what he said. He said kind of an infringement or something, and would I be willing to testify.

Q. What was it he asked you if you would be willing to testify to?

A. He said I would hear from the firm, I think.

Q. He did not attempt to find out at that time what you would testify to?

A. No, he didn't. I think he said I would hear from the firm.

Q. Did you then hear from the firm?

A. I don't know whether we got a letter or not—not a letter. We got a wire. It wasn't from Granat, it was from the attorneys.

Q. When did you get that?

A. The wire was sent on January 31st.

(Witness producing telegram.)

Mr. O'Hearn: Could we have this marked?

(The telegram referred to was marked Defendants' Exhibit A, and the same is attached to and made a part of this deposition.)

Q. (By Mr. O'Hearn): Between the time you were approached by the salesman for Granat Bros., and the time you received this telegram, January 31, 1949, did you have any other communication from Granat Bros., or their attorneys?

Plaintiff's Exhibit N-3—(Continued)
(Deposition of Arthur A. Navarro.)

A. None whatsoever.

Q. Did you see anyone associated with Granat Bros., or their attorneys, between that time?

A. I think the salesman was here since that time, he was in the store for about five minutes, or ten minutes.

Q. Did you discuss with him at that time what you would testify to?

A. No, not a word. I didn't have much time that day, when I come to think of it, and there was nothing mentioned, nothing said, not a word. I think he came through with a line. [36]

Q. Did you go over with Mr. Hursh the testimony that you would give here today?

A. No, sir.

Q. No mention made at all of what you were going to talk about?

A. No, except waiting for you, he said you were supposed to be in on the 10:15 train, we were sitting, talking about other things.

Mr. Hursh: We did discuss this matter, though, yesterday, we went over your testimony.

The Witness: He asked me what happened today. Today, you said he was going to come here.

Q. (By Mr. O'Hearn): You did see Mr. Hursh yesterday? A. Yes, sir.

Q. Did you discuss yesterday with him what you would testify today?

Plaintiff's Exhibit N-3—(Continued)
(Deposition of Arthur A. Navarro.)

A. No. Yesterday he said you would be here tomorrow. I said I could see you both. He may have asked me to get some of this ready. Is that right?

Mr. Hursh: That is right. [37]

Q. (By Mr. O'Hearn): Was it because of the fact that Defendant's mark, "Feature-Lok," include the word "lock," that you associated it with Granat Bros.?

A. Well, the first time someone came in here, they told me they had something better than Granat, or something like that, I don't know how it was, immediately I thought that someone was trying to make the same thing as Granat. That is the impression I got.

Q. The first time you heard of this other interlocking ring sold under a name including the word "lock," the person who approached you said that he had something better than Granat Bros.?

A. That is what he said.

Q. Then you did not believe, when you first heard of this other mark, including the word "lock," that it was a product manufactured by Granat Bros.?

A. When he first came in, I thought maybe it was a secondary line, or something like that, but when he told me who he was, I didn't have a thing to do with it, because I didn't like the product, and I was satisfied with what I had. I thought maybe

Plaintiff's Exhibit N-3—(Continued)

(Deposition of Arthur A. Navarro.)

it was a cheaper line they were putting out, like [38] a lot of other diamond companies do.

Q. Did you think it likely that Granat Bros. would put out a secondary line, and then send out this salesman to sell you a better product than Wed-Lok?

A. I didn't think so, no, but for a minute I thought something like that.

Mr. O'Hearn: I think that is all.

Redirect Examination

By Mr. Hursh:

Q. What is the population of Aurora?

A. Fifty thousand.

Mr. Hursh: That is all.

Can we stipulate that the signature may be waived?

Mr. O'Hearn: That is agreeable to me.

Q. (By Mr. Hursh): Mr. Navarro, will you agree that it will be unnecessary for you to read and sign your deposition? A. Yes.

Mr. Hursh: It is stipulated that Mr. Navarro will endeavor to secure additional [39] advertisements that he has inserted in the newspapers in the Aurora area, and that these will be marked as Exhibits 10 and following, and that the Reporter may so mark them and attach them to the original of the deposition. In the event that Mr. Navarro does not secure these advertisements in time for the

Plaintiff's Exhibit N-3—(Continued)
(Deposition of Arthur A. Navarro.)

Reporter to attach them to the deposition, then they will be omitted therefrom.

Mr. O'Hearn: It is so stipulated.

(Signature waived.)

The reading of his foregoing fully transcribed deposition, and the signing thereof by the said witness, Arthur A. Navarro, were by stipulation by and between counsel for the parties, and by the witness, duly waived.

[Seal] /s/ EARL W. RADFORD,
Notary Public,
DuPage County, Illinois.

My Commission Expires September 8, 1949.

[Endorsed]: Filed Mar. 16, 1949.

PLAINTIFF'S EXHIBIT O-3

The deposition of Charles Van Sipma, a witness on the part of the Plaintiff, in each of the above-entitled causes, pursuant to Notice of Taking Depositions, a signed copy of which is attached to the deposition of Arthur A. Navarro, and pursuant to the Rules of Civil Procedure for District Courts of the United States, before Earl W. Radford, a Notary Public of the County of Du Page, State of Illinois, acting as a Notary Public within and

Plaintiff's Exhibit O-3—(Continued)

for the County of Cook, State of Illinois, under and by virtue of the provisions of Chapter 99, Paragraph 10, Illinois Revised Statutes, 1945, commencing at the hour of 2:00 o'clock in the afternoon, on Friday, February 11, A.D. 1949, at 11114 South Michigan, Chicago, Illinois.

Appearances:

MELLIN AND HANSCOM, By
JACK E. HURSH, ESQ.,

391 Sutter Street,

San Francisco 8, California,

For the Plaintiff in each of the above-entitled causes;

NAYLOR AND LASSAGNE,

Russ Building,

San Francisco, California, [2*]

JOHN VAUGHAN GRONER, ESQ., and

WILLIAM J. O'HEARN, JR., ESQ., By

WILLIAM J. O'HEARN, JR., ESQ.,

20 Exchange Place,

New York City, New York,

For the Defendants and Intervening Defendant in each of the above-entitled causes. [3]

* Page numbering appearing at top of page of original Reporter's Transcript.

Plaintiff's Exhibit O-3—(Continued)

Oath of Shorthand Reporter

I do solemnly swear that I will well and truly, faithfully, accurately and impartially report in shorthand the proceedings had upon the taking of the deposition herein, pursuant to Notice of Taking Depositions, and pursuant to the Rules of Civil Procedure for District Courts of the United States, and prepare a full, true and correct transcript of my shorthand notes so made as aforesaid, so help me God.

/s/ EARL W. RADFORD.

Subscribed and sworn to before me, this 11th day of February, A.D. 1949.

[Seal] /s/ JOSEPH S. GUYETTE,
Notary Public,
Cook County, Illinois.

My Commission expires May 31, 1951. [8]

By Mr. Hursh: The same stipulations that we entered into at the start of the Navarro deposition will be adhered to on this deposition.

Mr. O'Hearn: Yes.

CHARLES VAN SIPMA

of lawful age, having been by me, the said Earl W. Radford, as Notary Public as aforesaid, first duly cautioned and sworn to tell the truth, the whole truth and nothing but the truth, in the matter of

Plaintiff's Exhibit O-3—(Continued)
(Deposition of Charles Van Sipma.)

controversy aforesaid, was examined and did there-upon depose, testify and say as follows, viz.:

Direct Examination

By Mr. Hursh:

Q. State your name, please.

A. Charles Van Sipma.

Q. Where do you reside?

A. 11028 Parnell, Chicago.

Q. What is your occupation?

A. Jeweler and Optometrist. [9]

Q. How long have you been so engaged?

A. Since 1920.

Q. Do you know of a firm of manufacturing jewelers by the name of Granat Bros.?

A. I do.

Q. Do you know where the firm is located?

A. Yes.

Q. Where is it located?

A. San Francisco.

Q. How long have you known of this company?

A. I should say twenty years.

Q. Do you know the kind of merchandise they manufacture and sell? A. Yes.

Q. What type of merchandise is it?

A. The type we have been buying has been mountings and rings, wedding rings.

Q. Have you ever heard of the trade-mark "Wed-Lok" employed to identify a wedding ring

Plaintiff's Exhibit O-3—(Continued)

(Deposition of Charles Van Sipma.)

and engagement ring ensemble? A. I have.

Q. Whose product is identified by that trade-mark? A. Granat Bros. [10]

Q. How long have you known of the trade-mark "Wed-Lok," identifying ring ensembles?

A. As long as we have done business with them.

Q. Do you sell "Wed-Lok" rings in your store?

A. I do.

Q. How long have you sold "Wed-Lok" rings?

A. Since we have been doing business with them.

Q. Is that the "Wed-Lok" rings, or the Granat rings, now?

A. As soon as they came out with "Wed-Lok," we put those in. I don't know when that would have been. But the Granat ring, and then their matching wedding ring, when they came out with it, I think that is when we first did business with them.

Q. You could not fix that date by year, could you? A. No, I really couldn't.

Q. Do you know the quality of merchandise sold by Granat Bros.?

A. Yes. We have always found it very good quality.

Q. Could you tell the reputation that Granat Bros. has in this area for quality of merchandise they manufacture and sell?

A. I only know about what we sell of theirs, and that we always found good. [11]

Plaintiff's Exhibit O-3—(Continued)
(Deposition of Charles Van Sipma.)

Q. When you hear the word "lock," either spelled "L-o-k," or "L-o-c-k," employed to identify wedding ring and engagement ring ensembles, whose product do you identify it with?

Mr. O'Hearn: I object, as not coming within the terms of the complaint, since there is no claim made as to a trade-mark with the word "Lok," aside from its use in the word "Wed-Lok."

The Witness: I always identified it with the Granat rings.

Q. (By Mr. Hursh): Have you advertised the sale of Wed-Lok rings in your store?

A. Yes, we have.

Q. What type of advertising do you employ?

A. The mats furnished by them.

Q. How long have you advertised Wed-Lok rings?

A. Off and on. We used to insert one of theirs every once in a while with a certain type of ad we put in. I wouldn't know exactly how long, but the last several years.

Q. Do you have any such advertisements?

A. Just one that we had in yesterday. I do not [12] keep them.

Q. Can you produce that ad?

A. I can. (Witness producing advertisement.)

Q. You have produced an advertisement in the Calumet Index, dated Wednesday, February 9, 1949.

Plaintiff's Exhibit O-3—(Continued)

(Deposition of Charles Van Sipma.)

Is that your advertisement appearing on page 8 of this paper? A. That is right.

Q. And this advertisement refers to Wed-Lok rings sold by your store? A. That is right.

Q. Has it been your practice to put similar ads in the paper, identifying Wed-Lok rings by Granat?

A. That is right.

Q. For the past years? A. That is right.

Mr. Hursh: I will introduce this sheet as Exhibit 1, to this deposition.

(The advertisement referred to, so offered in evidence, was marked Deposition Exhibit No. 1, and the same is attached to and made a part of this deposition.) [13]

Q. (By Mr. Hursh): I notice on this advertisement that you mention Granat Bros. Is it your usual practice to identify the Wed-Lok rings as being manufactured by Granat Bros., in your ads?

A. That is right.

Q. Do you use any other medium of advertising?

A. Yes. We have had them in church papers, and church directories.

Q. Do you have any of those available?

A. No, I do not. I think that was several years ago that we had that.

Q. How often have you had your advertisements in church directories?

A. Probably only once, it is a yearly directory.

Q. What year was that? Do you know?

Plaintiff's Exhibit O-3—(Continued)
(Deposition of Charles Van Sipma.)

A. That I wouldn't know, but I know I have used those mats in their directory. I don't have any of those earlier copies.

Mr. Hursh: I believe that is all of the direct examination.

Cross-Examination

By Mr. O'Hearn:

Q. Is this area around in here called by any particular [14] name?

A. Well, yes, it is called Roseland. It is really Chicago, but the shopping area is Roseland.

Q. Approximately how far is it from the Downtown center of Chicago? A. Fifteen miles.

Q. Is this paper in which Exhibit 1 appeared published daily, or weekly?

A. Weekly—well, no, I would say semi-weekly. They have a Monday paper now, too.

Q. Do you know whether or not you handled Wed-Lok rings prior to the war?

A. Oh, yes, we did.

Q. Did you continue to sell them during the war, while the war was going on?

A. That is right, we did.

Q. In the same quantity that you sold them before the war, or since the war?

A. That would be rather hard to say. I don't know. Probably more. We have done more business during the war.

Q. Do you know of any other interlocking wed-

Plaintiff's Exhibit O-3—(Continued)

(Deposition of Charles Van Sipma.)

ding and engagement rings made by other manufacturers that are sold under trade-marks which include the [15] name "lock?"

A. I don't handle any, no.

Q. Do you know of any? A. Yes.

Q. Could you recall the names of any other interlocking ring sets that you know of?

A. Well, yes, the Feature-Lock. I have a few of those. Isn't that one made by Sless-Harwood?

Q. I think Feature-Lock is made by the Feature-Lock Co.

A. Then that is not it. But we have some from Sloss-Harwood that lock together. I don't know what they call it, however.

Q. Have you ever heard of Kin-Lock?

A. No.

Q. Or Duolock? A. No, I have not.

Q. Do you know that there is some other ring made that uses the word "lock" in its name?

A. Yes.

Q. How long have you been familiar with that?

A. Oh, just a short time, I would say.

Q. At the time that you first heard of Wed-Lok, however, you had not heard of any other [16] manufacturer that was selling a ring under any name with the word "lok" in it?

A. That is right.

Q. Would you say that that was the reason that you associate any name given to an interlocking ring

Plaintiff's Exhibit O-3—(Continued)
(Deposition of Charles Van Sipma.)

set which includes the word "lok" with the Granat company?

A. Well, they called theirs "Wed-Lok" before this, they made them conform, and called them Wed-Lok for that reason. They did not actually lock together, as they do now, but they had a conformity there, and that is where they got their name, I presume.

Q. Granat Bros. makes other types of rings, do they not, that do not interlock?

A. That is right.

Q. Do you sell some of those, too?

A. Yes, we do.

Q. The name Wed-Lok, however, is not associated with those rings, is it?

A. Well, when they are matched up, they are, yes.

Q. Whether or not they interlock?

A. That is right.

Q. Prior to the time that Wed-Lok was manufactured by Granat Bros., they sold other types of rings, [17] matching sets? A. That is right.

Q. Which did not interlock?

A. That is right.

Q. But they were not called Wed-Lok rings at that time?

A. When they matched they did, yes.

Q. I am going back before the period——

Plaintiff's Exhibit O-3—(Continued)
(Deposition of Charles Van Sipma.)

A. Of the clamping together, that is right, before that.

Q. (Continuing): —before the period that Granat Bros. brought out an interlocking ring which they called Wed-Lok, they sold matching wedding and engagement rings, did they not?

A. That is right.

Q. Which did not interlock?

A. That is right.

Q. But they did not call those rings which did not interlock Wed-Lok? A. I think they did.

Mr. Hursh: I object to that question, on the ground that I believe Mr. Van Sipma testified that those were rings where the mountings conformed in shape to one another, [18] and that Granat Bros., when they sold that type of ring, applied the trademark "Wed-Lok" to it.

I do not think the question is intelligible to Mr. Van Sipma, and I believe it should be cleared up, so that he knows just exactly which rings you are referring to.

Q. (By Mr. O'Hearn): Was there a period during which Granat Bros. made and sold wedding and engagement rings, in which they were sold not under the name Wed-Lok?

A. Well, not that I know of. I mean, if you would buy just one ring, for instance, without a matching wedding ring, it would not be called that,

Plaintiff's Exhibit O-3—(Continued)
(Deposition of Charles Van Sipma.)

but if you would buy a so-called matched set, it would be called a Wed-Lok.

Q. I believe you testified that you had known about Granat Bros. for approximately twenty years? A. I believe that is correct, yes.

Q. And that you have sold Wed-Lok rings since Granat Bros. brought out the Wed-Lok ring?

A. That is right, that is, unless they had it prior to that. But I mean, when we first did business [19] with them, that is what we bought. I am quite sure that would be twenty years ago.

Q. Were you selling rings called Wed-Lok rings twenty years ago?

A. If they had them at that time, yes.

Mr. Hursh: It is stipulated between Counsel that so far as this record is concerned, Granat Bros., some time in 1934, adopted and used the trade-mark "Wed-Lok" as identifying products of their manufacture.

Q. (By Mr. O'Hearn): Do you know whether or not you did business with Granat Bros. prior to 1934? A. Yes, we did.

Q. Then you must have sold rings of Granat Bros. which were not known by the name "Wed-Lok"?

A. Yes, I would say that. Before they came out with them, it would have to be that, wouldn't it?

Plaintiff's Exhibit O-3—(Continued)

(Deposition of Charles Van Sipma.)

Q. Would you not say that the name Wed-Lok was adopted by Granat Bros. in the sale of their interlocking rings in order to distinguish these rings from their non-interlocking rings which they had previously sold? [20]

A. No, I would not, because we had sold them before, but they probably added this feature later. I don't know when that was—perhaps a couple of years ago, when they locked together, but they did sell them as Wed-Lok, before they did snap together.

Q. But those were the rings which did conform in their shape, so that they did cling together, whether or not they had an actual interlock device or not, is that not true? A. Yes.

Q. So that Granat Bros. adopted the mark "Wed-Lok" to distinguish any type of wedding and engagement ring which clung together, or locked?

A. And I believe when they matched together, too.

Q. When you speak of a matched set, you do not necessarily mean a set that clings together on the finger, and is thereby not able to turn around on the finger?

A. Well, I don't know whether that was applied to those rings or not, but I know they always had the Wed-Lok name to them. Whether it applied to those that were not conforming, or just matched, I wouldn't really know.

Plaintiff's Exhibit O-3—(Continued)
(Deposition of Charles Van Sipma.)

Q. Does the word "lock," when used in a trademark [21] or a trade name, signify anything to you as to the type of ring that is sold under that mark?

A. It would more or less now, since it has been adopted, that they snap together, yes.

Q. Would you say that the word "Wed-Lok," or the name "Wed-Lok," is used to characterize the function of the rings themselves, meaning the interlocking feature?

A. It would now at the present day, I think, yes.

Q. Do you not believe that in introducing an interlocking type of ring, as distinguished from a non-interlocking type of ring, it is necessary to include in the name of the ring either the word "lock" or something signifying locking together, in order to distinguish that type of ring from the non-interlocking type?

Mr. Hursh: I object to that question, on the ground it is really conjecture.

The Witness: I don't know much about what people would call anything. One might call it one thing, and another another, but what anyone would call it, I would not be prepared to answer. [22]

Q. (By Mr. O'Hearn): Is there any way of finding out from your records, Mr. Van Sipma, the quantities of Wed-Lok rings that you sold during the war period?

A. Well, I would have to find out. Our invoices

Plaintiff's Exhibit O-3—(Continued)

(Deposition of Charles Van Sipma.)

would show. It might be quite a job, being back three or four years.

Mr. Hursh: It is stipulated that Mr. Van Sipma will endeavor to check through his invoices and determine whether he purchased Wed-Lok rings during the war period, say, from 1941 to 1946. 1941-'47, we want any invoices showing Wed-Lok rings.

The Witness: That were marked Wed-Lok rings?

Mr. Hursh: Yes.

If he happens to know from other data on the invoice, anything that to his knowledge was a Wed-Lok ring, and so called by Granat Bros.

The Witness: But not the snap rings, you mean?

Mr. Hursh: I think they would have to be the conformed mounting rings. I will write him a letter to that effect. [23]

Mr. O'Hearn: I think that is all.

Redirect Examination

By Mr. Hursh:

Q. In your advertising, do you usually mention the fact that the Wed-Lok rings are manufactured by Granat Bros.?

A. Yes, I presume. I don't look too closely at them. I use the mats they furnish, and put it in as it is. Is it called that in there?

(Exhibit 1 was handed to the witness.)

Plaintiff's Exhibit O-3—(Continued)
(Deposition of Charles Van Sipma.)

The Witness (Continuing): Yes.

Q. (By Mr. Hursh): On these early rings that you purchased from Granat Bros., and sold under the trade-mark Wed-Lok, will you state whether they were the type of ring that had the conformed mounting, so that the mounting of the wedding ring fitted into and interlocked with the shape of the engagement ring, or not? A. That is right.

Q. And you sold those rings, of that character, under the trade-mark "Wed-Lok," to your customers? A. Yes, sir. [24]

Q. Do you have any customers come into your store and ask for ring ensembles under the trade-mark "Wed-Lok," solely mentioning Wed-Lok rings? A. We have, yes.

Q. Will you state whether or not, in applying the word "Lok" to a ring ensemble, that had interlocking means, you were describing the entire ring ensemble, or merely that the word "Lok" was suggestive of one characteristic for such an ensemble?

A. Well, if they asked for Wed-Lok, we would say it was the conforming ring, but today, I mean since Wed-Lok has come out with a locking device, I presume we would apply it, and show them the two rings that snap together.

Q. Would you say that the word "Lok" was merely suggestive of that characteristic of the snapping together of the two rings?

A. I think their own advertising would suggest

Plaintiff's Exhibit O-3—(Continued)

(Deposition of Charles Van Sipma.)

that, now, but I mean prior to that, we did. Since they brought out the lock, we call it that, because there are no other ones today, I mean, even manufacturing them, I don't believe. [25]

Recross-Examination

By Mr. O'Hearn:

Q. This is an advertisement that is made up from mats supplied by Granat Bros.?

A. That is right.

Q. This is the advertisement marked Deposition Exhibit 1:

“Wed-Lok Diamond Rings by Granat Locked together when worn together, these rings are always properly aligned, yet they unlock instantly at any time!”

Would you say that what I have just read from that advertisement is descriptive of the type of ring that is sold under the name “Wed-Lok”?

A. Yes, as it is written there, I would, yes.

Q. Would you say that the word “Wed-Lok” is itself descriptive of the ring that is sold under that name?

A. You mean that would describe the locking of it? No, sir, I don't think it would, unless you read further in there, probably. “Wed-Lok,” as a heading there, wouldn't necessarily mean that they snapped together. [26]

Q. If you ran across any ring set sold now under any name including the word “lock,” would

Plaintiff's Exhibit O-3—(Continued)

(Deposition of Charles Van Sipma.)

you not expect that it was an interlocking type of ring?

A. If it locked together, yes, I would, definitely.

Q. No. I mean, running across the name, including the word "lock," without knowing yourself whether the ring was an interlocking ring, would you not expect that the name was used with a ring set that did interlock?

A. No, I wouldn't say so, not the way they used it before. It would be a matching ring.

Q. I think all the time we may be misunderstanding each other. When I talk about an interlocking ring, I mean either a ring that snaps together, or a ring that is made so that the mounting of the wedding ring conforms to the mounting of the engagement ring, so that the two do interlock in a sense, and therefore do not slip on the finger.

If a ring were sold under any name which included the word "lock," would you not believe and expect that it was an interlocking type of ring, meaning either a snap interlock, or an interlock caused by the conformation? [27]

A. I would think so, yes.

Mr. O'Hearn: That is all.

Redirect Examination

By Mr. Hursh:

Q. Do you sell the Wed-Lok threesome in your store?

A. Occasionally, yes.

Plaintiff's Exhibit O-3—(Continued)

(Deposition of Charles Van Sipma.)

Q. In the Wed-Lok threesome, you have a gentleman's wedding ring, do you not? A. Yes.

Q. What do you call that wedding ring when sold in the Wed-Lok threesome? Is that a Wed-Lok ring, or not?

A. A Wed-Lok matching ring, yes.

Q. Will you state whether or not the men's matching wedding ring in a Wed-Lok threesome has interlocking means of any character?

A. No, only that it would match the set, but not a locking, it couldn't very well have.

Mr. Hursh: That is all.

It is stipulated by and between counsel that Mr. Van Sipma need not read or sign the deposition.

Mr. O'Hearn: It is so agreed. [28]

Q. (By Mr. Hursh): And, Mr. Van Sipma, do you agree it is not necessary for you to read and sign the deposition? A. Yes.

(Signature waived.)

The reading of his foregoing fully transcribed deposition, and the signing thereof by the said witness, Charles Van Sipma, were by stipulation by and between counsel for the parties, and by the witness, duly waived.

[Seal] /s/ EARL W. RADFORD,

Notary Public,

DuPage County, Illinois.

My Commission expires September 8, 1949.

Plaintiff's Exhibit O-3—(Continued)
(Deposition of Charles Van Sipma.)
State of Illinois,
County of Cook—ss.

Certificate of Notary Public and
Shorthand Reporter

I, Earl W. Radford, a Notary Public in and for the County of Du Page and State of Illinois, acting as a Notary Public within and for the County of Cook, and State of Illinois, under and by virtue of the provisions of Chapter 99, Paragraph 10, Illinois Revised Statutes, 1945, do hereby certify that the witness Charles Van Sipma, was by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in two certain causes now pending and undetermined in the District Court of the United States for the Northern District of California, Southern Division, to wit: Granat Bros., a corporation, Plaintiff, vs. Samuel H. Friend, S. Herbert Friend and Leonard V. Block, copartners doing business under the firm name and style of S. H. Friend, Defendants, and Feature Ring Co., Inc., [31] Intervening Defendant, Civil Action No. 28219-H; and Granat Bros., a corporation, Plaintiff, vs. Herbert Brown, an individual, Defendant, and Feature Ring Co., Inc., Intervening Defendant, Civil Action No. 28220-H.

That the said deposition of the said Charles Van Sipma was taken before me, beginning at the hour of 2:00 o'clock p.m., on Friday, the 11th day of

Plaintiff's Exhibit O-3—(Continued)

(Deposition of Charles Van Sipma.)

February, A.D. 1949, and concluded at the hour of 4:04 o'clock p.m. of the same day, at 11114 South Michigan, Chicago, Illinois, as hereinbefore more specifically set forth in the transcript of said deposition;

That the testimony contained in said deposition then and there given by said witness was taken down by me in shorthand, in the presence of said witness, and thereafter by me and under my direct personal supervision transcribed into typewriting.

I further certify that I am a Shorthand Reporter of more than twenty-five years' active experience immediately last past; and I further certify that the foregoing transcript of said deposition is a full, true and correct transcript of my said shorthand notes so made as aforesaid, [32] and is a full, true and correct report of the whole of the testimony so given by said witness as aforesaid, together with such other matters and things as Counsel for the parties present at the taking of said deposition desired to have appear of record.

I do further certify that said deposition was taken, beginning at the time and at the place mentioned and described in the caption and Notice of Taking Depositions, hereinbefore set forth, and as set forth in the foregoing transcript of said deposition, and that the taking of said deposition was completed, as aforesaid, on the 11th day of February, A.D. 1949.

Plaintiff's Exhibit O-3—(Continued)
(Deposition of Charles Van Sipma.)

I do further certify that by stipulation by and between Counsel for the parties, and by agreement of the Witness, the reading and signing of the said deposition by the said Witness were duly waived.

I further certify that during the taking of said deposition a certain document was produced and testified of, to, and concerning by the said Witness, which document was marked Deposition Exhibit No. 1, and the same is attached to and made a part of this deposition.

I do further certify that the Plaintiff [33] in each of said causes was represented at the taking of said deposition by Messrs. Mellin and Hanscom, (391 Sutter Street, San Francisco 8, California), by Jack E. Hursh, Esq., and that the Defendants and the Intervening Defendant were represented by Messrs. Naylor and Lassagne, (Russ Building, San Francisco, California), and John Vaughan Groner, Esq., and William J. O'Hearn, Jr., Esq., (20 Exchange Place, New York City, New York), by William J. O'Hearn, Jr., Esq.

I do further certify that I am not of counsel for, nor attorney or solicitor for any or either of the parties to said causes, nor am I related to any or either of the said parties, nor am I interested in any manner in the said causes or in the outcome.

Plaintiff's Exhibit O-3—(Continued)
(Deposition of Charles Van Sipma.)

I do further certify that it being impracticable for me to deliver the deposition aforesaid with my own hands to the Clerk of said Court, that after binding, taping, ensealing and certifying to the same as aforesaid, as more fully hereinbefore appears, I have sealed up the said deposition, and herewith direct and transmit the same by due course of the United States Mail, Registered, Postage fully prepaid, to the Court [34] in which said causes are pending, and that said deposition has been retained in my possession since the taking of said deposition, and until said deposition was sealed up and transmitted to the Clerk of said Court by registered United States Mail, as aforesaid.

In Witness Whereof, I have hereunto set my hand and notarial seal at Chicago, Cook County, Illinois, in said Northern District of Illinois, Eastern Division, at Chicago, certifying and returning said deposition to the above-entitled Court this 23rd day of February, A.D. 1949.

[Seal] /s/ EARL W. RADFORD,
Notary Public,
Du Page County, Illinois.

My commission expires September 8, 1949.

[Endorsed]: Filed Mar. 16, 1949.

Plaintiff's Exhibit O-3—(Continued)
(Deposition of Charles Van Sipma.)
DuPage County,
State of Illinois—ss.

I, Clarence V. Wagemann, Clerk of the County Court in and for said County, the same being a Court of Record, do hereby certify that Earl W. Radford whose signature appears to the foregoing proof of acknowledgment, was at the date of taking said proof a Notary Public in said County, as evidenced by his commission of record, in my office. That his commission bears date 8th day of September, A.D. 1945, and will expire on the 8th day of September, 1949. And I further certify that I am well acquainted with his handwriting and know that the signature purporting to be his, is genuine and that said acknowledgment is taken in accordance with the laws of Illinois, and that said Earl W. Radford as said Notary Public, was on the said date duly authorized to take acknowledgments throughout the State of Illinois in accordance with the provisions of Section 10, title "Notaries Public," of the Revised Statutes of Illinois.

In Testimony Whereof, I hereunto set my hand and affix the seal of said Court at Wheaton, in said County, this 23rd day of September, A.D. 1949.

[Seal] /s/ CLARENCE V. WAGEMANN,
Clerk.

[Title of District Court and Cause]

PLAINTIFF'S EXHIBIT P3

The deposition of Norman Kernis, a witness on the part of the Plaintiff, in each of the above-entitled causes, pursuant to Notice of Taking Depositions, a signed copy of which is attached to the deposition of Arthur A. Navarro, and pursuant to the Rules of Civil Procedure for District Courts of the United States, before Earl W. Radford, a Notary Public of the County of Du Page, State of Illinois, acting as a Notary Public within and for the County of Cook, State of Illinois, under and by virtue of the provisions of Chapter 99, Paragraph 10, Illinois Revised Statutes, 1945, commencing at the hour of 4:35 o'clock in the afternoon, on Friday, February 11, A.D. 1949, at 6335 South Halsted Street, Chicago, Illinois.

Appearances:

MELLIN AND HANSCOM, By

JACK E. HURSH, ESQ.,

391 Sutter Street,

San Francisco, 8, California,

For the Plaintiff in each of the above-entitled causes;

NAYLOR AND LASSAGNE,

Russ Building,

San Francisco, California, [2*]

* Page numbering appearing at top of page of original Reporter's Transcript.

Plaintiff's Exhibit P3—(Continued)
JOHN VAUGHAN GRONER, ESQ., and
WILLIAM J. O'HEARN, JR., ESQ., By
WILLIAM J. O'HEARN, JR., ESQ.,

20 Exchange Place,

New York City, New York,

For the Defendants and Intervening
Defendant in each of the above-entitled
causes. [3]

Oath of Shorthand Reporter

I do solemnly swear that I will well and truly, faithfully, accurately and impartially report in shorthand the proceedings had upon the taking of the deposition herein, pursuant to Notice of Taking Depositions, and pursuant to the Rules of Civil Procedure for District Courts of the United States, and prepare a full, true and correct transcript of my shorthand notes so made as aforesaid, so help me God.

/s/ EARL W. RADFORD.

Subscribed and sworn to before me, this 11th day of February, A.D. 1949.

[Seal] /s/ JOSEPH S. GUYETTE,
Notary Public, Cook County,
Illinois.

My Commission expires May 31, 1951. [8]

Plaintiff's Exhibit P3—(Continued)

PROCEEDINGS

Mr. Hursh: The same stipulation will be entered into.

Mr. O'Hearn: Yes.

NORMAN KERNIS

of lawful age, having been by me, the said Earl W. Radford, as Notary Public as aforesaid, first duly cautioned and sworn to tell the truth, the whole truth and nothing but the truth, in the matter of controversy aforesaid, was examined and did there-upon depose, testify and say as follows, viz.:

Direct Examination

By Mr. Hursh:

Q. Will you state your name?

A. Norman Kernis.

Q. What is your residence?

A. 7633 Essex.

Q. What is your occupation, Mr. Kernis?

A. Jewelry and appliance business. [9]

Q. How long have you been engaged in the jewelry business?

A. Since approximately 1924.

Q. Do you know of Granat Bros.?

A. Yes.

Q. Do you know where they are located?

A. San Francisco, California.

Q. How long have you known of Granat Bros.?

A. My first contact with Granat Bros. was when

Plaintiff's Exhibit P3—(Continued)

(Deposition of Norman Kernis.)

I was with Holland's. I think it dates back to about 1932 or '33 or '34, through those years.

Q. Do you know of the character of the products that Granat Bros. manufactures and sells?

A. It has always been regarded as a high-grade line.

Q. Just what products do they sell?

A. Diamond rings, diamond wedding rings, mountings, gent's wedding rings with diamonds and without diamonds. To my knowledge, that is what they handle at the present time.

Q. Are you familiar with the term "Wed-Lok" used on ring ensembles? A. Yes.

Q. Do you know who produces the Wed-Lok ring [10] ensemble? A. Granat.

Q. How long have you known of the use of the trademark "Wed-Lok" by Granat Bros.?

A. I cannot state the exact length of time, but my recent experience has been the last fifteen or eighteen months. Prior to that I recollect that they had rings that followed the contour of one another, and if my recollection is correct, it goes back to probably 1937 or '38, where they used the term "Wed-Lok" at that time, meaning that the two rings hooked together, or locked together, at that time.

Q. Have you ever advertised Wed-Lok ring ensembles, as selling them from your store?

A. Yes.

Plaintiff's Exhibit P3—(Continued)

(Deposition of Norman Kernis.)

Q. How long have you advertised Wed-Lok ring ensembles?

A. The last fifteen months.

Q. What types of advertising do you employ?

A. Local newspaper, direct-mail, window advertising, displays, and so forth.

Q. How often would you say that you run advertisements in the newspapers where you feature the sale [11] of Wed-Lok ring ensembles?

A. For a while, I think we were running two to three times a week. Recently, possibly once a month. In fact, yesterday we had an ad in the American.

Q. Do you have the advertising material at your store?

A. Yes, I can get it for you.

Q. Will you produce it, please?

A. Yes, sure.

Q. When you hear the word "lock", either spelled "l-o-k," or "l-o-c-k," used in conjunction with wedding ring and engagement ring ensembles, with whose product do you identify it?

Mr. O'Hearn: I would like to object to that question on the ground that it is immaterial to the issues involved here, because there is no claim made of any trademark on the word "Lok" alone, dissociated from the word "Wed-Lok."

The Witness: My first recollection would be Granat.

Plaintiff's Exhibit P3—(Continued)
(Deposition of Norman Kernis.)

Q. (By Mr. Hursh): Do you also sell Feature rings in your store? [12] A. Yes.

Q. How long have you sold Feature rings in your store?

A. The last five or six years, four or five or six years. I can look up the records, and tell you exactly.

Q. How long have you sold Wed-Lok ring ensembles in your store?

A. Since the inception of the store, September 16, 1939.

Q. You have produced a book of advertisements, and I find here an advertisement.

A. That was in the Southtown Economist.

Q. What date was this advertisement?

A. 10-1-47, and 10-15-47.

Q. And that advertises Wed-Lok rings from Norman. Is that your store?

A. That is right.

Q. And that advertisement appeared in the paper on those dates?

A. Those two specific dates.

Mr. Hursh: There are a number of them. Do you want to take a look at them?

Mr. O'Hearn: Yes. [13]

Mr. Hursh: Inasmuch as Mr. Kernis has these advertisements bound in permanent record form, and desires to retain them, may we stipulate that

Plaintiff's Exhibit P3—(Continued)

(Deposition of Norman Kernis.)

photostats may be substituted in lieu of the originals?

Mr. O'Hearn: It is so stipulated.

Q. (By Mr. Hursh): I find you have the name of the paper and the date written on the back of these advertisements, and in some instances on the page on which the advertisement is attached in the book. Is that your usual business practice in identifying these ads? A. That is right.

Mr. Hursh: I will introduce this one ad, or a photostatic copy of it, as Exhibit 1 of this deposition.

(The advertisement referred to, so offered in evidence, was marked Kernis Deposition Exhibit 1, and a photostatic copy thereof, likewise marked Kernis Deposition Exhibit 1, is attached to and made a part of this deposition.)

The Witness: This is the next ad.

Q. (By Mr. Hursh): The next ad was inserted in what paper, on what dates?

A. In the Herald-American, 9-9-47, 10-29-47, and 10-9-47.

Q. That was placed in the paper, advertising the sale of Wed-Lok rings from your store?

A. Yes, it was placed in that paper, advertising the sale of Wed-Lok rings from our store, and we marked on it "Wed-Lok Rings by Granat."

Q. And it was inserted in that paper on the dates you just mentioned?

Plaintiff's Exhibit P3—(Continued)
(Deposition of Norman Kernis.)

A. That is right.

Mr. Hursh: I will introduce that in evidence as Exhibit 2.

(The advertisement referred to, so offered in evidence, was marked Kernis Deposition Exhibit 2, and a photostatic copy thereof, likewise marked Kernis Deposition Exhibit 2, is attached to and made a part of this deposition.)

The Witness: Here is another ad. [15]

Q. (By Mr. Hursh): You refer to another advertisement. Could you identify that advertisement?

A. Yes. That was run in the Sun.

Q. What date? A. 10-16-47, and 12-18-47.

Mr. Hursh: I will introduce that in evidence as Exhibit 3.

(The advertisement referred to, so offered in evidence, was marked Kernis Deposition Exhibit 3, and a photostatic copy thereof, likewise marked Kernis Deposition Exhibit 3, is attached to and made a part of this deposition.)

Q. (By Mr. Hursh): The next ad is what?

A. Southtown Economist.

Q. What date? A. 11-23-47.

Mr. Hursh: I will introduce that in evidence as Exhibit 4.

Plaintiff's Exhibit P3—(Continued)

(Deposition of Norman Kernis.)

(The advertisement referred to, so offered in evidence, was marked [16] Kernis Deposition Exhibit 4, and a photostatic copy thereof, likewise marked Kernis Deposition Exhibit 4, is attached to and made a part of this deposition.)

The Witness: Here is the next one.

Q. (By Mr. Hursh): On the same page in the book is a second ad, advertising Wed-Lok. Will you state when that was run in the paper?

A. That was in the Southtown Economist, 12-7-47, and 11-30-47.

Mr. Hursh: It is stipulated that we can take a picture of the entire page, and both of these ads will be considered as Exhibit 4?

Mr. O'Hearn: All right.

Q. (By Mr. Hursh): The next ad appears on the opposite page. What paper was that in?

A. Southtown Economist.

Q. What date? A. 12-21-47, and 12-31-47.

Q. And that advertisement states: "Wed-Lok Rings [17] By Granat"? A. Right.

Mr. Hursh: I will introduce that as Exhibit 5.

(The advertisement referred to, so offered in evidence, was marked Kernis Deposition Exhibit 5, and a photostatic copy thereof, likewise marked Kernis Deposition Exhibit 5, is attached to and made a part of this deposition.)

Plaintiff's Exhibit P3—(Continued)
(Deposition of Norman Kernis.)

Q. (By Mr. Hursh): On the next page you have turned to, I find five advertisements of Wed-Lok rings sold at Norman's. Are those advertisements of your store? A. That is right.

Q. And would you identify the first one, as to what paper it appeared in? A. The Sun.

Q. And what dates did it appear?

A. 12-4-47, and 12-7-47.

Mr. Hursh: That particular ad will be marked Exhibit 6-A, appearing on this page, and I offer it in evidence. [18]

(The advertisement referred to, so offered in evidence, was marked Kernis Deposition Exhibit 6-A, and a photostatic copy thereof, likewise marked Kernis Deposition Exhibit 6-A, is attached to and made a part of this deposition.)

Q. (By Mr. Hursh): The next ad appeared in what paper? A. Southtown Economist.

Q. And on what dates?

A. 12-28-47, and 12-31-47.

Mr. Hursh: I will offer that as Exhibit 6-B.

(The advertisement referred to, so offered in evidence, was marked Kernis Deposition Exhibit 6-B, and a photostatic copy thereof, likewise marked Kernis Deposition Exhibit 6-B, is attached to and made a part of this deposition.)

Plaintiff's Exhibit P3—(Continued)

(Deposition of Norman Kernis.)

Q. (By Mr. Hursh): The next ad, what paper?

A. Herald-American. [19]

Q. And the date? A. December 28, 1947.

Mr. Hursh: I will offer that in evidence as Exhibit 6-C.

(The advertisement referred to, so offered in evidence, was marked Kernis Deposition Exhibit 6-C, and a photostatic copy thereof, likewise marked Kernis Deposition Exhibit 6-C, is attached to and made a part of this deposition.)

Q. (By Mr. Hursh): The next ad appeared in what paper? A. The Sun.

Q. What date? A. 11-30-47.

Mr. Hursh: I will offer that as Exhibit 6-D.

(The advertisement referred to, so offered in evidence, was marked Kernis Deposition Exhibit 6-D, and a photostatic copy thereof, likewise marked Kernis Deposition Exhibit 6-D, is attached to and made a part of this deposition.) [20]

Q. (By Mr. Hursh): And the last ad on that page ran in what paper?

A. Herald-American.

Q. On what date? A. 11-20-47.

Mr. Hursh: I will introduce that as Exhibit 6-E.

Plaintiff's Exhibit P3—(Continued)
(Deposition of Norman Kernis.)

(The advertisement referred to, so offered in evidence, was marked Kernis Deposition Exhibit 6-E, and a photostatic copy thereof, likewise marked Kernis Deposition Exhibit 6-E, is attached to and made a part of this deposition.)

Mr. Hursh: It is stipulated that one photostat of the entire page will show all of those five advertisements.

Mr. O'Hearn: All right.

Q. (By Mr. Hursh): On the next page is an ad "Wed-Lok Rings by Norman." That appeared in what paper? A. The Sun.

Q. Under what date? A. 12-22-47. [21]

Mr. Hursh: I will introduce that as Exhibit 7.

(The advertisement referred to, so offered in evidence, was marked Kernis Deposition Exhibit 7, and a photostatic copy thereof, likewise marked Kernis Deposition Exhibit 7, is attached to and made a part of this deposition.)

Q. (By Mr. Hursh): The next advertisement was run in what paper?

A. Herald-American.

Q. On what dates?

A. 12-11-47, 12-4-47, 12-19-47, and 12-22-47.

Mr. Hursh: I will introduce that in evidence as Exhibit 8.

Plaintiff's Exhibit P3—(Continued)

(Deposition of Norman Kernis.)

(The advertisement referred to, so offered in evidence, was marked Kernis Deposition Exhibit 8, and a photostatic copy thereof, likewise marked Kernis Deposition Exhibit 8, is attached to and made a part of this deposition.) [22]

Q. (By Mr. Hursh): The next advertisement appearing in the book ran in what paper?

A. Southtown Economist.

Q. Under what date? A. 10-8-47.

Mr. Hursh: I will introduce that in evidence as Exhibit 9-A.

(The advertisement referred to, so offered in evidence, was marked Kernis Deposition Exhibit 9-A, and a photostatic copy thereof, likewise marked Kernis Deposition Exhibit 9-A, is attached to and made a part of this deposition.)

Q. (By Mr. Hursh): On the same page is a second ad, advertising Wed-Lok rings by Granat. In what paper did that appear?

A. Southtown Economist.

Q. On what dates?

A. 2-18-48, and 2-22-48.

Mr. Hursh: I will introduce that in evidence as Exhibit 9-B.

Plaintiff's Exhibit P3—(Continued)
(Deposition of Norman Kernis.)

(The advertisement referred to, [23] so offered in evidence, was marked Kernis Deposition Exhibit 9-B, and a photostatic copy thereof, likewise marked Kernis Deposition Exhibit 9-B, is attached to and made a part of this deposition.)

Q. (By Mr. Hursh): The next advertisements, appearing on the next page, will you identify what paper the first one was run in?

A. Sunday Tribune.

Q. What date? A. 5-9-48.

Mr. Hursh: I will introduce that in evidence as Exhibit 10-A.

(The advertisement referred to, so offered in evidence, was marked Kernis Deposition Exhibit 10-A, and a photostatic copy thereof, likewise marked Kernis Deposition Exhibit 10-A, is attached to and made a part of this deposition.)

Q. (By Mr. Hursh): The next advertisement on the same page appeared [24] in what paper?

A. The Sunday Tribune.

Q. What date? A. 5-23-48.

Mr. Hursh: I will introduce that in evidence as Exhibit 10-B.

(The advertisement referred to, so offered in evidence, was marked Kernis Deposition

Plaintiff's Exhibit P3—(Continued)

(Deposition of Norman Kernis.)

Exhibit 10-B, and a photostatic copy thereof, likewise marked Kernis Deposition Exhibit 10-B, is attached to and made a part of this deposition.)

Q. (By Mr. Hursh): The next advertisement on that page ran in what paper?

A. Southtown Economist.

Q. What date? A. 5-21-48.

Mr. Hursh: I introduce that in evidence as Exhibit 10-C.

(The advertisement referred to, so offered in evidence, was marked Kernis Deposition Exhibit 10-C, [25] and a photostatic copy thereof, likewise marked Kernis Deposition Exhibit 10-C, is attached to and made a part of this deposition.)

Q. (By Mr. Hursh): On the next page there is one ad appearing. Will you state in what paper that ad was run? A. Southtown Economist.

Q. What date? A. 10-13-48.

Mr. Hursh: I will introduce that in evidence as Exhibit 11.

(The advertisement referred to, so offered in evidence, was marked Kernis Deposition Exhibit 11, and a photostatic copy thereof, likewise marked Kernis Deposition Exhibit 11, is attached to and made a part of this deposition.)

Plaintiff's Exhibit P3—(Continued)
(Deposition of Norman Kernis.)

Q. (By Mr. Hursh): The next advertisement was run in what paper?

A. Chicago Tribune.

Q. And on what dates?

A. 8-22-48, and 10-3-48. [26]

Mr. Hursh: I will introduce that in evidence as Exhibit 12.

(The advertisement referred to, so offered in evidence, was marked Kernis Deposition Exhibit 12, and a photostatic copy thereof, likewise marked Kernis Deposition Exhibit 12, is attached to and made a part of this deposition.)

Q. (By Mr. Hursh): The next advertisement in your book was in what paper?

A. Chicago Tribune.

Q. And on what dates?

A. 10-10-48, and 10-17-48.

Mr. Hursh: I will introduce this as Exhibit 13-A.

(The advertisement referred to, so offered in evidence, was marked Kernis Deposition Exhibit 13-A, and a photostatic copy thereof, likewise marked Kernis Deposition Exhibit 13-A, is attached to and made a part of this deposition.) [27]

Q. (By Mr. Hursh): On the same page is a second ad, and this appeared in what paper?

A. Southtown Economist.

Q. What date? A. 10-13-48.

Plaintiff's Exhibit P3—(Continued)

(Deposition of Norman Kernis.)

Mr. Hursh: I will introduce that in evidence as Exhibit 13-B.

(The advertisement referred to, so offered in evidence, was marked Kernis Deposition Exhibit 13-B, and a photostatic copy thereof, likewise marked Kernis Deposition Exhibit 13-B, is attached to and made a part of this deposition.)

Q. (By Mr. Hursh): The next advertisement is a full-page advertisement in the Southtown Economist, dated December 8, 1948, and I notice that you mention Wed-Lok rings in that advertisement.

A. Yes.

Q. Did this advertisement run in the Southtown Economist on Wednesday, December 8, 1948?

A. That is right. [28]

Mr. Hursh: I will introduce that in evidence as Exhibit 14.

(The advertisement referred to, so offered in evidence, was marked Kernis Deposition Exhibit 14, and a photostatic copy thereof, likewise marked Kernis Deposition Exhibit 14, is attached to and made a part of this deposition.)

Q. (By Mr. Hursh): You have produced a two-page advertisement in the Southtown Economist, Wednesday, May 19, 1948. Can you identify the Wed-Lok rings advertised in that advertisement?

A. Yes.

Q. Will you do so, and state what ring ensemble?

Plaintiff's Exhibit P3—(Continued)
(Deposition of Norman Kernis.)

A. Ring ensembles numbers 4, 5, and 6.

Mr. Hursh: I will introduce that in evidence as Exhibit 15.

(The advertisement referred to, so offered in evidence, was marked Kernis Deposition Exhibit 15, and a photostatic copy thereof, likewise marked Kernis Deposition [29] Exhibit 15, is attached to and made a part of this deposition.)

Q. (By Mr. Hursh): You have another advertisement here. In what paper was that run?

A. In The Chicago Tribune.

Q. And on what dates?

A. We can check that from the invoices. I can check it if you want me to, check the bill on it, a full-page advertisement in The Chicago Tribune.

Q. It evidently was around Christmas, wasn't it?

A. That is right.

Q. Because you have a picture of Santa Claus, and pine cones.

A. I think about two weeks before Christmas.

Q. In 1948?

A. That is right. Here it is. The Sunday Tribune, 12-12-48.

Q. And this page from The Chicago Tribune, was run in what paper, and on what date?

A. Chicago Sunday Tribune, 12-12-48.

Mr. Hursh: I will introduce that in evidence as Exhibit 16.

Plaintiff's Exhibit P3—(Continued)

(Deposition of Norman Kernis.)

(The advertisement referred to, [30] so offered in evidence, was marked Kernis Deposition Exhibit 16, and a photostatic copy thereof, likewise marked Kernis Deposition Exhibit 16, is attached to and made a part of this deposition.)

The Witness: This one is yesterday's American.

Q. (By Mr. Hursh): You have produced an advertisement in the Chicago Herald-American, Thursday, February 10, 1949?

A. That is right.

Q. "Wed-Lok Diamond Rings From Norman," and that advertisement was run by your company on that date? A. Right.

Mr. Hursh: I will introduce that as Exhibit 17.

(The advertisement referred to, so offered in evidence, was marked Kernis Deposition Exhibit 17, and a photostatic copy thereof, likewise marked Kernis Deposition Exhibit 17, is attached to and made a part of this deposition.)

Q. (By Mr. Hursh): I believe you testified that you have handled the Feature ring for a number of years? A. Yes.

Q. Prior to the advent of the Feature-Lock ring ensemble coming to your attention, did you ever know of any other ring ensemble in the market employing the word "lok" other than the Wed-Lok ring ensemble? A. No.

Plaintiff's Exhibit P3—(Continued)

(Deposition of Norman Kernis.)

Q. You are familiar, are you not, with the quality of the products manufactured by Granat Bros.?

A. Yes.

Q. Would you state just what quality of product Granat Bros. manufactures?

A. A very fine quality product.

Q. Are you familiar with the quality of merchandise produced by Feature Ring Co.?

A. Yes.

Q. Will you compare the quality of merchandise manufactured and sold by Granat Bros., under the trade-mark "Wed-Lok," with the quality of merchandise manufactured and sold by the Feature Ring Co., under the trade-mark "Feature-Lock"?

Mr. O'Hearn: Are you introducing Mr. Kernis as an expert?

Mr. Hursh: I am qualifying him as one who has long been in the jewelry business, and, with this long association in the jewelry business, he is able to speak as to the quality of various pieces of jewelry, I do not consider him to be an expert so far as this case is concerned in any manner at all, except through his long familiarity with the jewelry business.

Mr. O'Hearn: I object to the question as calling for an opinion.

The Witness: To my knowledge, a ring that is die-struck will be a better piece of merchandise for the customer than a cast ring.

Plaintiff's Exhibit P3—(Continued)
(Deposition of Norman Kernis.)

In die-striking a ring, you roll out the metal, and hereby the molecules of the metal are very close together.

In a cast ring, through centrifugal force, you cannot get the molecules as close together, and your ring thereby is more or less porous to some degree, the molecules are not as close together. [33]

In a die-struck ring, the ring is apt to crack or break by being brittle; also that depends upon the alloying of the gold. You get a better finish and polish on a ring that is die-struck, because the metal seems to be harder, which you cannot get with a cast ring, the metal is not as hard, and if it is the least porous, every porous mark will show on the surface of it.

Q. (By Mr. Hursh): What type of ring does Granat Bros. produce?

A. They have a die-struck ring.

Q. What type ring does Feature-Lock produce?

A. Cast.

Q. Do you have customers come into your store and ask for Wed-Lok ring ensembles?

A. Yes.

Q. Do you know how often this happens?

A. I couldn't say the exact number of times, but it is during the daily course of our business.

Q. In your sale of Wed-Lok rings, do you consider the word "Lok" of that trade-mark "Wed-Lok" to be a valuable part of the trade-mark?

Plaintiff's Exhibit P3—(Continued)
(Deposition of Norman Kernis.)

A. Definitely so.

Q. Do you consider the word "Lok" to be a dominant [34] part of the trade-mark "Wed-Lok?"

A. Yes.

Q. Do you know what reputation Granat Bros. enjoys in this Chicago area?

A. I know that their line is not handled promiscuously, and therefore I myself deem it a line of great value to an individual store. I understand that some of what we call the finer stores have them in Chicago, like Marshall Field's, and if I am not mistaken, Goldstein has it, out in South Chicago, which has a good reputation. Kirchberg, in Chicago, also has a good reputation, and maybe others. I am not too familiar with how many different people they have in this area.

Mr. Hursh: I believe that is all.

Cross-Examination

By Mr. O'Hearn:

Q. Will you tell me what this Southtown Economist paper is? Is it a weekly paper, or a daily paper?

A. It comes out twice a week. They have a Wednesday issue, and they have a Sunday issue.

Q. What is the Herald-American?

A. The Herald-American is a daily metropolitan [35] Chicago paper.

Q. Would you check and find out the date of the

Plaintiff's Exhibit P3—(Continued)

(Deposition of Norman Kernis.)

earliest advertisement of those exhibits that were just put in, or do you know offhand?

A. I don't know offhand, but I gave them to you as they were registered in the book. Some, I noticed, were out of sequence. The book possibly was rearranged when they put it together, and they used the same ad, maybe, in a number of different papers, so they ran after each other.

Q. I wonder if you could just take time and see if you could determine, roughly, the earliest date.

A. This book only goes back to a certain date, you understand. We may have had ads prior with which I am not familiar. Now, 9-9-47, I believe, was the first ad that we ran.

Q. (By Mr. Hursh): You are referring to Exhibit 2?

A. Exhibit 2, that is right.

I will look further, and see if there is an earlier one. I think that is the first one.

Q. (By Mr. O'Hearn): Is that about the length of time that you have been handling the Wed-Lok rings? [36]

A. I had the wedding rings prior to that, only a different type of Wed-Lok, the rings wrapped around one another, instead of being locked together like they are today.

Q. They were also sold under the trade-mark "Wed-Lok"? A. That is right.

Plaintiff's Exhibit P3—(Continued)
(Deposition of Norman Kernis.)

Q. Do you carry other Granat merchandise, other than Wed-Lok?

A. At the present time, I am only featuring the Wed-Lok series. I don't buy any of the other.

Q. Have you ever at any time sold any of the other Granat merchandise?

A. Yes. When I first started September 16, 1939, I purchased others.

Q. To your knowledge, was the Wed-Lok name applied to these interlocking rings to distinguish them from the other types of merchandise sold by Granat Bros.?

A. I think it was the principle, mainly, of it locking together that sold it at the time.

Q. You mentioned the fact that you considered the word "Lok" an important part of the trade-mark. Will you explain why you consider it an important [37] part of the trade-mark?

A. I think it is the only way, myself, that I could identify the feature of both rings locking together, and not being able to turn away from one another.

Q. Would you say that the trade-mark "Wed-Lok" characterizes the type of ring that is sold under that mark?

A. Characterizes the type of ring? I think it signifies that a locking feature is involved in there.

Q. Do you know of any other interlocking wedding and engagement ring sets that are sold under a trade-mark with the word "lock" in the mark, other than "Wed-Lok", or "Feature-Lock"?

Plaintiff's Exhibit P3—(Continued)

(Deposition of Norman Kernis.)

A. I don't know them by name. I know there are others on the market.

Q. How long have you known that there were others?

A. It seems that this type took hold last spring, and others came out with ideas of that, but the only way I noticed it was when I went through the trade magazine, that I saw them, but I didn't pay any attention to them. I was satisfied with the types that we handle. [38]

Q. Were you familiar with Wed-Lok for some time prior to this? A. Yes.

Q. Is that the reason that you would consider that Granat Bros. would be the first name to come to your mind when you heard or saw a mark with the word "lock" in it? A. That is right.

Q. Do you vouch for and stand behind merchandise that you sell in your store?

A. Definitely so.

In fact, if you check our record with the Better Business Bureau, or the Jewelers' Association, you will see that we bear a very fine reputation.

Q. You would not sell any product, therefore, that you did not consider to be a high-quality product?

A. We carry merchandise in different price categories. I don't know what you mean by "high quality."

Q. For the price that is charged for it, you

Plaintiff's Exhibit P3—(Continued)

(Deposition of Norman Kernis.)

would consider it worth the money, good merchandise for the money that is charged for it?

A. It is merchandise that is worth the value, it is comparable [39] to other lines of the same category, yes. We carry silver plate, and we carry sterling silver. You cannot compare silver plate to sterling silver, yet we meet that particular market, although that is too wide of a spread, when you take the other things.

Q. I quote from the advertisement, marked Exhibit 1, attached to this deposition:

“Wed-Lok Rings”—then, leaving out some intervening words,—“for wedding band and engagement ring lock together . . .,” the words “lock together” are italicized. Would you say that the word “Wed-Lok” in the advertisement was descriptive of the type of ring that is sold, namely, the interlocking type of ring?

A. I don't think I can answer that question.

Mr. Hursh: Possibly it is indefinite. If you do not understand the question, Mr. Kernis, you have the right to ask counsel to make it understandable and definite to you.

The Witness: You say you have got “Wed-Lok.” To me, that would just be a trade name. I don't think it signifies [40] anything like material. It is a trade name for a certain product. I couldn't say it signifies anything. It would be a trade name,

Plaintiff's Exhibit P3—(Continued)

(Deposition of Norman Kernis.)

in my understanding, unless I am not answering the question properly.

Mr. Hursh: I think that is a proper answer.

Q. (By Mr. O'Hearn): Would not a ring set sold under a trade-mark which included the word "lock" signify to you an interlocking type of ring?

A. Now it would, since Granat's existence, you understand. Maybe prior to that, it wouldn't have.

Q. I notice that in every advertisement, Exhibits Nos. 1, 2, 3, and No. 4, the one in the lower lefthand corner of the page, and No. 5, the word "locked," or the words "lock together," are italicized in the advertisement.

A. That is a Granat mat there, you understand, and that is the way they submitted it to us. We just got some new mats in. We can check and see if they are all of the same type. They have a mat service, and they are submitted.

Mr. O'Hearn: I think that is all. [41]

Redirect Examination

By Mr. Hursh:

Q. Mr. Kernis, is the Chicago Tribune a daily Chicago paper?

A. The Tribune is a daily Chicago paper. Those advertisements that were run in the Tribune were run in what they call the Metro section of the Tribune, which is a special section. The City is split into different sections, I believe it is split

Plaintiff's Exhibit P3—(Continued)

(Deposition of Norman Kernis.)

into five sections, and we advertise in the Southwest section of the Tribune.

Q. And the Herald-American, is that a daily paper?

A. That is a daily paper that is throughout Chicago.

Q. And The Sun?

A. The Sun is a daily paper throughout Chicago.

Q. The Southtown Economist is what type of paper?

A. That runs west of State Street, I think to about 5500, north of here, and the City Limits south, and I think west it goes to the City Limits.

Mr. Hursh: That is all.

Recross-Examination

By Mr. O'Hearn:

Q. I think I recall your mentioning that you have [42] handled Wed-Lok rings since about 1939.

A. Yes, but it was a different type then. They had it where it followed the curvature of the ring; if the ring was curved, then it followed the curve of the ring, and they held together that way, although I can't say they were locked together. They held together. It depends on how you want to use that descriptive word.

Q. Did you continue to sell interlocking rings, whether or not they were of the actual interlocking

Plaintiff's Exhibit P3—(Continued)

(Deposition of Norman Kernis.)

type, or merely of the conforming type, during the war years?

A. No. The only time we went back into it was when Granat came out with the new Wed-Lok, we made matching rings, but not where they held together that way.

Q. The rings that were matched but not held together were not sold under the name "Wed-Lok," were they? A. No, definitely.

Q. (By Mr. Hursh): You are referring to the rings you made yourself?

A. The rings we made ourselves. We didn't do much with Granat during the war years, because Granat wanted to sell their goods mounted, you understand, and we mounted all our own goods, but, of course, the Wed-Lok series we buy completely mounted, with the diamonds in, so, during the war years, we didn't have much business with Granat. Before the war years, and after the war years, we did a swell job. In fact, today, we sold a set, five hundred and some dollars.

Mr. O'Hearn: That is all.

Mr. Hursh: That is all.

It is stipulated by and between counsel that Mr. Kernis will not have to read and sign the deposition.

Mr. O'Hearn: It is so stipulated.

Q. (By Mr. Hursh): Mr. Kernis, will you waive the reading and signing of your deposition?

A. Yes.

Plaintiff's Exhibit P3—(Continued)
(Deposition of Norman Kernis.)
(Signature waived.)

The reading of his foregoing fully transcribed deposition, and the signing thereof by the said witness, Norman Kernis, were by stipulation by and between counsel [44] for the parties, and by the witness, duly waived.

[Seal] /s/ EARL W. RADFORD,
Notary Public,
DuPage County, Illinois.

My Commission expires September 8, 1949.

[Endorsed]: Filed Mar. 16, 1949. [45]

PLAINTIFF'S EXHIBIT Q3

[Title of District Court and Causes.]

Deposition of Harry Gamler taken at 522 Main Street, Buffalo, New York, before Carmen S. DePaolo, Notary Public, on Monday, February 14th, 1949, at 1:00 p.m.

Appearances:

MELLIN AND HANSCOM, by

JACK E. HURSH, ESQ.,

391 Sutter Street, Suite 500,

San Francisco 8, California,

Attorneys for Plaintiff.

FISH, RICHARDSON & NEAVE,

20 Exchange Place,

New York City, N. Y., by

WILLIAM J. O'HEARN, ESQ.,

Attorneys for Defendants.

Mr. Hursh: It is stipulated that a copy of the notice of taking of deposition may be attached to this deposition, the original of the notice having been attached to the depositions that were taken at Portland, Oregon. It is also stipulated that the reporter may take the deposition in shorthand and thereafter transcribe it into typewritten form for filing with the court, and it is further [2*] stipulated that all objections to the questions except as to form are reserved until the time of trial, and it is also stipulated that the deposition was postponed

* Page numbering appearing at top of page of original certified Transcript of Record.

Plaintiff's Exhibit Q3—(Continued)

by mutual consent of counsel from 11 a.m. as noticed on the depositions to 1 p.m.

HARRY GAMLER

called by Plaintiff and sworn, testified as follows:

Direct Examination

By Mr. Hursh:

Q. Will you state your name, please?

A. Harry Gamler.

Q. What is your residence?

A. 1290 Delaware.

Q. In Buffalo?

A. Apartment 3A; Buffalo, New York.

Q. And what is your occupation, Mr. Gamler?

A. Jeweler. [3]

Q. And how long have you been in the jewelry business?

A. Since—let me see—oh, I would say roughly about 1905.

Q. And do you know of a firm of manufacturing jewelers by the name of Granat Brothers?

A. I do.

Q. And how long have you known of Granat Brothers?

A. Roughly I would say about twenty years.

Q. And do you know what products Granat Brothers manufacture and sell?

A. Well, they sell diamond rings, wedding rings, and Wed-Loks.

Plaintiff's Exhibit Q3—(Continued)

(Deposition of Harry Gamler.)

Q. Have you heard of the trade-mark "Wed-Lok" used in connection with wedding ring-engagement ring ensembles? A. Yes.

Q. Whose product or products are identified by the use of the trade-mark "Wed-Lok"?

A. Granat.

Q. How long have you known of the trade-mark "Wed-Lok" used in conjunction with ring ensembles?

A. You mean "Wed-Lok" you are talking about?

Q. Yes, Wed-Lok rings. [4]

A. Oh, I would say before the war; I can't tell you the definite date.

Q. Do you sell Wed-Lok rings in your store?

A. We do.

Q. Do you know the quality of Granat Brothers products, Mr. Gamler? A. I do.

Q. What is that quality?

A. Well, they are supposed to represent the finest ring manufactured; it is supposed to be the best as far as they are concerned in the jewelry industry.

Q. What is the quality of the Wed-Lok ring ensemble?

A. You mean the—well, you mean the patent end of it?

Q. No, just the ring ensemble itself?

Plaintiff's Exhibit Q3—(Continued)
(Deposition of Harry Gamler.)

A. I would say it is the finest made in that particular line.

Q. How long have you been selling Wed-Lok rings in your store?

A. I can't remember. I have to look up the ad. (Looking at papers.) I think we have an announcement [5] here, I think it is September; the first ad I believe came out September 3rd, 1947.

Q. And do you advertise the sale of Wed-Lok rings in your store? A. We do.

Q. And will you please produce the advertising material that you have been able to gather?

A. I have it right here.

Q. I show you a photostatic copy of an advertisement of the Buffalo Evening News for Wednesday, September 3, 1947 advertising Wed-Lok rings from Gamler's. Will you state whether that ad appeared in that paper on that date?

A. Correct.

Q. Does it advertise the sale of Wed-Lok rings from your store? A. Yes.

Mr. Hursh: I will introduce that in evidence as Exhibit 1 to this deposition. Can we introduce this the way it is, Mr. Gamler?

The Witness: Yes.

Mr. Hursh: Will you mark it Exhibit 1, Mr. Stenographer? [6]

Plaintiff's Exhibit Q3—(Continued)
(Deposition of Harry Gamler.)

(Photostatic copy of advertisement of the Buffalo Evening News for Wednesday, September 3, 1947 advertising Wed-Lok rings from Gamler's marked Exhibit 1.)

Q. (By Mr. Hursh): I show you an advertisement that has the pencil notation on it "News, 5/28/48" advertising Wed-Lok diamond rings by Granat, and I ask you if your company placed that ad in the Buffalo papers on the date appearing?

A. Correct.

Q. And what paper did that appear in?

A. Buffalo Evening News.

Mr. Hursh: I will introduce that advertisement as Exhibit 2.

(Advertisement with pencil notation "News 5/28/48" advertising Wed-Lok Diamond Rings by Granat, marked Exhibit 2.)

Q. (By Mr. Hursh): You have produced another advertisement of the [7] Buffalo Courier-Express, Sunday, June 20, 1948, advertising the sale of Wed-Lok rings. Did your company place that advertisement in that paper?

A. Yes. Whatever it says there is correct.

Mr. Hursh: I will introduce that advertisement as Exhibit 3.

(Advertisement of Buffalo Courier-Express dated Sunday, June 20, 1948, marked Exhibit 3.)

Plaintiff's Exhibit Q3—(Continued)
(Deposition of Harry Gamler.)

Q. (By Mr. Hursh): You have produced an advertisement of the Buffalo Evening News, Wednesday, June 23, 1948 advertising Wed-Lok rings. Did your company place that advertisement in the papers on that date? A. Correct.

Mr. Hursh: I will introduce that as Exhibit 4.

(Photostatic copy of Gamler's ad in Buffalo Evening News, dated Wednesday, June 23, 1948, marked Exhibit 4.)

Q. (By Mr. Hursh): Another ad that you have produced is one that [8] appeared in the Buffalo Evening News, Friday, July 23, 1948. I will ask you if that ad was placed in that paper on that date by your company? A. Correct.

Mr. Hursh: I will introduce that advertisement as Exhibit 5.

(Photostatic copy of advertisement in Buffalo Evening News, Friday, July 23, 1948, marked Exhibit 5.)

Q. (By Mr. Hursh): And you have produced an advertisement that appeared in the Buffalo Evening News, Wednesday, February 9, 1949 advertising "Serenade Series Wed-Lok Diamond Rings by Granat." Did your company place that ad in the paper on that date? A. It did

Mr. Hursh: I will introduce that advertisement as Exhibit 6.

Plaintiff's Exhibit Q3—(Continued)

(Deposition of Harry Gamler.)

(Gamlers advertisement in Buffalo Evening News, Wednesday, February 9, 1949 marked Exhibit 6.) [9]

Q. (By Mr. Hursh): I notice that in these advertisements that have been introduced in evidence as Exhibits 1 to 6 inclusive that you have in each instance mentioned the fact that the Wed-Lok ring is a Granat ring. Is that your customary practice?

A. Yes, all Granat.

Q. And what other methods of advertising do you employ?

A. Well, we have radio, direct mail, bill posters and television.

Q. I notice on Exhibit 6 you mention the following: "See the Serenade Wed-Lok Diamond Rings on Television Tonight WBEN-TV Channel 4." Will you state what that wording means on this advertisement?

A. That means that these people who are on television, we have given them a Granat Wed-Lok set of this particular design, Serenade, and they have shown the public through television how it operates with the opening and closing Wed-Lok and things like that.

Q. How long have you been advertising Wed-Lok rings by radio? [10]

A. Oh, I would say about the same that we have announced it in the newspaper. In fact, we tie it

Plaintiff's Exhibit Q3—(Continued)

(Deposition of Harry Gamler.)

up with putting this here (indicating); when we announce it in the newspaper, we also announce it at the same time over the radio so it ties up.

Q. That would be approximately September 3rd, 1947? A. Around that particular time.

Q. And you have also produced a pamphlet entitled "Wed-Lok Rings by Granat." Is that a pamphlet that you employ in your store?

A. Correct.

Q. And how do you employ that pamphlet in advertising Wed-Lok rings in your store?

A. Well, we send them out in the mail, direct mail, and we give them out on the counter; that is about all; we send them our direct mail and give them out at the counter in the store.

Q. About how many of these pamphlets did you use last year?

A. Roughly I would say over five thousand.

Q. Over five thousand? A. Yes. [11]

Mr. Hursh: I will introduce the pamphlet as Exhibit 7.

(Pamphlet entitled "Wed-Lok Rings by Granat" marked Exhibit 7.)

Q. (By Mr. Hursh): I noticed on my way into your store that you have quite a large sign on the outside of your building advertising Wed-Lok rings? A. Yes.

Q. When was that sign placed on your store?

Plaintiff's Exhibit Q3—(Continued)

(Deposition of Harry Gamler.)

A. Last year, some time last year.

Q. Would you say that it was the early part of last year?

A. I couldn't definitely say exactly. I haven't got the date on it.

Q. You have produced a photostatic copy of a photograph showing your store and the sign——

A. I can find out by calling up the people who painted the sign; they would have the bill and the date of the bill.

Q. ——is that a picture of your store showing the [12] Wed-Lok sign? A. Correct.

Mr. Hursh: I will introduce that photograph as Exhibit 8.

(Photograph of store and sign advertising Wed-Lok Diamond rings marked Exhibit 8.)

Q. (By Mr. Hursh): Where in Buffalo is your store located? A. What do you mean?

Q. What is the exact position of your store?

A. 522 Main Street, corner of Genesee.

Q. That is the corner of Main and Genesee?

A. Correct.

Q. Where is that with relation to the shopping center of Buffalo?

A. That is the heart of Buffalo.

Q. How often do you advertise by radio?

A. We are on the radio every day on all stations.

Q. How often would you say your sale of the

Plaintiff's Exhibit Q3—(Continued)

(Deposition of Harry Gamler.)

Granat Wed-Lok ring ensemble is mentioned on your radio programs?

A. Well, whenever we run an ad, we generally tie it up. [13]

Q. How often do you run newspaper advertisements?

A. Anywhere from one to three times a week.

Q. And how often in those newspaper advertisements do you feature the sale of Wed-Lok rings?

A. Well, just what I showed you right there in those newspaper ads; that is, you can see for yourself whatever I have shown you.

Q. In your television program how often do you advertise the sale of Wed-Lok rings from your store?

A. Well, television has only been about a month or five weeks and I think we had it on three times.

Mr. Hursh: It is hereby stipulated by and between counsel that the radio script mentioning the trade-mark "Wed-Lok" may be introduced in evidence as the exhibit next in number which will be Exhibit 9. The reason for not introducing the script during the deposition is the fact that Mr. Gamler has not as yet received the script from his advertising man and that the same is now on its way to his store and as soon as it is received the particular script referring [14] to Wed-Lok ring ensembles will be introduced and it will be attached as a regular exhibit to the deposition.

Plaintiff's Exhibit Q3—(Continued)

(Deposition of Harry Gamler.)

(Three radio scripts advertising Wed-Lok rings marked Exhibits 9, 9A, and 9B.)

Q. (By Mr. Hursh): Mr. Gamler, will you tell us what radio stations your radio advertising has been transmitted over?

A. WBEN, WGR, WEBR, WBNY and I believe it is WKBW.

Q. When you hear the word "Wed-Lok," either spelled "Lok" or "Lock" used in conjunction with rings and ring ensembles, with whose products do you identify it?

Mr. O'Hearn: I object to that question on the ground that it does not come within the pleadings since there is no claim made of a trade-mark of the word "Lok" or "Lock" aside from the trade-mark "Wed-Lok." A. Granat.

Q. (By Mr. Hursh): Do you have customers come into your store and ask for Wed-Lok rings by that name? [15] A. We do.

Q. How often does this occur?

A. Well, they come in quite often; I couldn't say definitely because I am not on the floor most of the time.

Q. In your sale of Wed-Lok rings in your store would you state whether or not the word "Lok" is a valuable part of that trade-mark? A. Yes.

Q. Would you state whether or not the word "Lok" is a dominant part of that trade-mark?

A. Yes.

Plaintiff's Exhibit Q3—(Continued)
(Deposition of Harry Gamler.)

Q. Do you know the reputation that Granat Brothers' products has in the Buffalo area?

A. I would say that they have the finest reputation not only in the Buffalo area but wherever its rings are sold.

Q. Have you ever seen a Feature-Lok ring ensemble? A. I have.

Q. And under what circumstances did you see Feature-Lok ring ensembles?

A. Well, we had a couple of jobbers who came through here last year with the Feature-Lok ring and [16] I looked at them and compared them with our product and there was no comparison.

Q. And when you state that there was no comparison, will you amplify that and tell us the difference?

A. Well, the quality of the ring itself, the make of the ring—well, I can't explain it—all I can say is there is no comparison to the quality of the ring itself, the casting and the make.

Q. Which ring would you state would be the better quality? A. Between what?

Q. Between the Feature-Lok ring and the Granat Wed-Lok?

A. I would say by all means the Granat.

Q. Up until the time you saw the Feature-Lok ring did you ever hear of a ring or ring ensemble sold where part of the name under which it was sold employed the use of "Lok"? Strike that ques-

Plaintiff's Exhibit Q3—(Continued)

(Deposition of Harry Gamler.)

tion out please. Prior to the time you saw the Feature-Lok ring, had you ever seen a ring ensemble other than that manufactured by Granat Brothers that employed the word "Lok" in conjunction with the trade name or trade-mark under which it was sold? A. I did not. [17]

Mr. Hursh: That is all of the direct examination.

Cross-Examination

By Mr. O'Hearn: -

Q. Mr. Gamler, are you familiar with the fact that Granat Brothers sells other products than the Wed-Lok ring ensemble?

A. I am familiar with it.

Q. Do you handle the other products?

A. We do.

Q. The name "Wed-Lok" is never used in conjunction with the products which Granat Brothers sells other than the interlocking ring sets, is it?

A. Will you repeat that, please? You mean the Wed-Lok ring; is that what you mean?

Q. The name "Wed-Lok" is only used only with what you call the Wed-Lok ring? A. Yes.

Q. The name "Wed-Lok" then was adopted by Granat Brothers to distinguish this interlocking ring from its other products, was it not?

Mr. Hursh: I object to that question in that it is asking for hearsay on the part of Mr. Gamler. I don't think he would know what was in the mind

Plaintiff's Exhibit Q3—(Continued)

(Deposition of Harry Gamler.)

of Granat Brothers when they adopted this trademark.

Mr. O'Hearn: I will withdraw the question.

Q. To you does the name "Wed-Lok" distinguish the interlocking ring sets from the other products that Granat Brothers sells? A. Yes.

Q. Would you say that the name "Wed-Lok" characterizes the function of the interlocking ring sets?

A. Will you explain to me again the meaning of that because I don't get the drift of the question?

Q. In marketing or putting a new product on the market would you consider it important to give the product a name which signifies to the public something as to the type of product it is?

A. Well, I don't know what Granat had in mind because you are asking me something that they had in mind to market. You want to find out whether Wed-Lok is a feature of the ring?

Q. Would you say that the name "Wed-Lok" is descriptive of the type of ring which is sold under that name?

A. The Wed-Lok—you mean the Wed-Lok, you call it [19] descriptive of the ring itself?

Q. Yes.

A. No, I don't think it is descriptive; no, I say Wed-Lok is descriptive of the two rings together and that is the only thing I can say and it is sold as two; they cannot be sold apart.

Plaintiff's Exhibit Q3—(Continued)

(Deposition of Harry Gamler.)

Q. Would you say the name "Wed-Lok" is descriptive of the two when considered together as an interlocking ring set?

Mr. Hursh: I object to that question on the ground that it is indefinite. The question is not directed as to whether we are discussing the interlocking means or discussing the ring as a wedding ring and an engagement ring and until the particular definition of what you apply your question is clarified, I don't believe the witness can understand the question.

Mr. O'Hearn: Would you repeat the question, Mr. Stenographer, and see if the witness has any trouble understanding?

The Witness: Will you repeat it again?

(The Stenographer repeated the last question.) [20]

Q. By that I mean the two rings, the wedding ring and the engagement.

A. When together, they are known as "Wed-Lok."

Q. Would you consider that name descriptive of the two rings when sold together as a ring set?

A. What is the meaning of "descriptive"; what does that mean?

Q. Do you think it describes the function of the two rings?

A. The word "Wed-Lok"—do you mean the word "Wed-Lok," does that describe—I don't know

Plaintiff's Exhibit Q3—(Continued)

(Deposition of Harry Gamler.)

how the customer will take it. All I know is that we are following their advertising and we have to go accordingly. I wouldn't know how to answer that question because I don't know.

Q. I quote from the advertisement marked Exhibit 1 in this deposition: "Announcing Wed-Lok," and then there is something left out, and then: "but a tiny gesture locks them together," and "locks them together" is italicized. Would you say that the name "Wed-Lok" in connection with the words which I have quoted from this advertisement are descriptive of the ring set which is sold under [21] the name "Wed-Lok"?

A. Whatever it says; I haven't read the ad; I suppose the ad must be correct.

Q. But as written would you say it was descriptive of the ring set?

Mr. Hursh: What are you referring to? I object to that question as unintelligible. You don't state whether you are referring to the trade mark "Wed-Lok" or the descriptive matter employed in the advertisement itself.

Mr. O'Hearn: I believe the question reads the name "Wed-Lok" in connection with the rest of the words quoted from the advertisement. Would you repeat the question, Mr. Stenographer?

(Stenographer repeated the question as follows:)

Plaintiff's Exhibit Q3—(Continued)

(Deposition of Harry Gamler.)

“Q. I quote from the advertisement marked Exhibit 1 in this deposition: ‘Announcing Wed-Lok,’ and then there is something left out, and then: ‘but a tiny gesture locks them together,’ and ‘locks them together’ is italicized. Would you say that the word ‘Wed-Lok’ in connection with the words which I have quoted from this advertisement are descriptive [22] of the ring set which is sold under the name ‘Wed-Lok’.”

A. Well, according to the paper, it would be whatever the paper says because, you see, when we get those ads, we copy those ads as they send them to us and that is all I know it. We have to go according to their advertising.

Mr. Hursh: I still don't think the question is intelligible. I don't think the answer is responsive.

Mr. O'Hearn: I was asking for your opinion—not your opinion but what you get from reading the advertisement. Does it signify to you a locking type of ring set, the name “Wed-Lok”?

The Witness: A locking type? The word “Wed-Lok”? Well, if you look at the ring, it has a locking feature in there that locks the ring and the word “Wed-Lok” characterizes the word “Granat.”

Q. (By Mr. O'Hearn): You consider the word “Lok” an important part of the trade mark. Will you explain why you consider it an important part of the trade mark? [23]

Plaintiff's Exhibit Q3—(Continued)
(Deposition of Harry Gamler.)

A. Well, I have known of the company. In other words, it has great features in that ring.

Q. You mean the locking feature is important?

A. Well, the ring itself, the way it is made, the way the ring is finished, the way it is put together and everything in connection with Granat products.

Q. Why do you consider the word "Lok" to be an important part of the name "Wed-Lok"?

A. Well, that is something you have to ask Granat; they pass this thing on to us and we know it is a great feature because it is a locking set.

Mr. Hursh: That particular feature of the ring is a lock?

The Witness: That is what I thought it was.

Q. (By Mr. O'Hearn): Mr. Gamler, you mentioned that you are familiar with the name "Feature-Lok." Are you familiar with any interlocking ring sets that are sold under trade marks which include the name "Lok"?

A. Well, I will tell you what happened: I happened to read some trade journals and I saw different locks and at the beginning I thought they were all Granat products until I have written to Granat and [24] asked them for an explanation and they told me that they only manufacture the Granat only; that is as far as I know.

Mr. Hursh: You mean the Wed-Lok?

The Witness: Wed-Lok, yes, and then I began

Plaintiff's Exhibit Q3—(Continued)

(Deposition of Harry Gamler.)

to realize that the other ones were infringing as I thought it was at the time; I didn't know.

Mr. O'Hearn: I move to strike the last part of that answer as not responsive to the question.

Q. (By Mr. O'Hearn): Was that prior to the time that you were approached by the jobbers selling Feature-Lok?

A. You mean the other locks?

Q. That you heard of, other rings?

A. No. The first Feature-Lok that I heard about—in fact, one of our jobbers that we do business with, in fact, our jobbers brought it into us, and another jobber brought it into us and tried to sell us a Feature-Lok and I asked them a lot of questions; how can they interfere with the Granat line? So naturally they are jobbers and I told them I wouldn't be interested in them. [25]

Q. At that time had you heard of any other interlocking ring sets sold under any trade marks?

A. Granat locks was the first one we were interested in and we took the line on.

Q. But at the time you were approached by jobbers selling Feature-Lok had you heard of any other? A. No, I did not.

Q. When you first heard of the Feature-Lok line, did you believe that it was a product of Granat Brothers?

A. When I saw the ring I knew it wasn't because it was marked "Feature-Lok."

Plaintiff's Exhibit Q3—(Continued)

(Deposition of Harry Gamler.)

Q. Can you recall and tell me the names of any other interlocking ring sets that you are now familiar with that are sold under a trade mark which includes the word "Lok"?

A. Offhand I can't remember.

Q. Are you familiar with the name "Gemlock" which is sold by the Gemex Company in Newark, New Jersey? A. No.

Q. Are you familiar with the name "Turn-lok" which is also sold by the Gemex Company in Newark, New Jersey? [26] A. No.

Q. Are you familiar with the name "Dubl-Lock"? A. No.

Q. Are you familiar with the name "Nu-Lock" owned by the Freeman-Daughaday Company?

A. No.

Q. Are you familiar with the name "Like-Lok" owned by Manne and Sons? A. No, sir.

Q. Are you familiar with "Dove Tail Lok"?

A. No.

Q. Are you familiar with the name "Snap-Lock" owned by the Royal Jewelry Stores?

A. No, sir.

Q. Are you familiar with the name "Invisible Lok"? A. No.

Q. Are you familiar with the fact that the T. C. Tanke Company of 557 Main Street, Buffalo, New York, sells an interlocking ring set under the name "Invisible-Lok"?

Plaintiff's Exhibit Q3—(Continued)

(Deposition of Harry Gamler.)

A. I am not.

Q. You are familiar with the T. C. Tanke Company here in Buffalo? [27]

A. Very well.

Q. Are you familiar with the fact that a jewelry store, by the name of Leininger at 617 Main Street, Buffalo, sells the Feature-Lok ring?

A. Not at all. I never see their ads; I wouldn't know.

Q. At the time that you first heard of the name "Wed-Lok" you had not at that time heard of any other interlocking ring sold under a trade mark including the word "Lok"? A. No.

Q. Is that why the name "Wed-Lok" or any other ring sold under a trade mark including the name "Lok" first signifies to you the Granat Company?

A. Well, we have been buying Granat Brothers products and when they came out with that feature, we put in that line.

Q. Mr. Gamler, when were you first approached in connection with this suit?

A. When was I approached in connection with this suit?

Q. Yes.

A. I think about ten days ago or so. [28]

Q. By whom were you first approached?

A. Not in person; Mr. Granat, I believe, sent

Plaintiff's Exhibit Q3—(Continued)

(Deposition of Harry Gamler.)

out a letter and told me that there was a suit pending; that is all I know.

Q. When were you next approached by anyone connected with the Granat Brothers Company, either employed by the company or an attorney?

A. Well, this gentleman right here (indicating Mr. Hursh) called me up from Chicago last week and told me that he was going to be in town on the fourteenth and he wanted to know if I was going to be here.

Mr. Hursh: I previously sent you a wire, didn't I?

The Witness: Oh, yes; I had the wire, that is right. You sent me the wire about the 14th and I wired back that I was going to be here on the 14th.

Q. (By Mr. O'Hearn): When did you next see Mr. Hursh?

A. Well, this morning is the first time I saw him.

Q. Did you discuss your testimony this morning with Mr. Hursh?

A. I discussed things, yes. [29]

Q. Did he discuss with you the question of whether or not the word "Wed-Lok" was descriptive of the interlocking rings? A. No.

Q. Did you by any chance have the letter which you first received from the Granat Brothers Com-

Plaintiff's Exhibit Q3—(Continued)

(Deposition of Harry Gamler.)

pany notifying you of the fact that there was a suit?

A. I believe I have that. There was a letter sent, wasn't there? (to Mr. Hursh).

Mr. Hursh: There was a letter sent just recently requesting you to secure advertisements. That is the only one that I know that came from Granat Brothers.

A. That is the only one that came.

Q. That is the only letter you have had from Granat Brothers in connection with this suit?

A. That is right.

Q. You stated, I believe, on direct examination that you keep a copy of all the advertisements advertising the Wed-Lok ring which you have placed in the newspaper?

A. That is right. [30]

Q. And have you produced all of those advertisements here?

A. Yes, I have got most of them here.

Q. Are there any others besides the ones you have produced?

A. I will have to check again. That is all she gave me; that is all the secretary gave me. I don't think there is any more. There may be some more radio script.

Mr. O'Hearn: That is all.

Plaintiff's Exhibit Q 3—(Continued)
(Deposition of Harry Gamler.)

Redirect Examination

By Mr. Hursh:

Q. Does the word "Lok" describe a wedding ring to you, Mr. Gamler? A. No.

Q. Does the word "Lok" describe an engagement ring to you? A. No.

Q. Mr. Gamler, would you state whether or not the word "Lok" describes a wedding ring-engagement ring ensemble to you? [31]

A. The word "Lok" describes what?

Q. A wedding ring-engagement ring ensemble?

A. No.

Mr. Hursh: That is all.

Recross-Examination

By Mr. O'Hearn:

Q. I believe I understood you to say, Mr. Gamler, that the radio scripts mentioning the name "Wed-Lok" appeared approximately whenever a newspaper advertisement appeared mentioning the name "Wed-Lok"?

A. Not every time, but it may be sometime if you don't advertise in the newspaper, it may go into the radio and we skip it. You see, on the radio we are on practically every day. The newspaper runs maybe one, two or three times a week, so we cannot have it all at one time.

Q. Approximately how many times would you say that "Wed-Lok" is mentioned in your radio advertising, Mr. Gamler?

Plaintiff's Exhibit Q 3—(Continued)

(Deposition of Harry Gambler.)

A. Well, I would have to get it from my advertising [32] man; offhand I couldn't tell.

Q. Would you say once a week, once a month, once every two months?

A. I would have to get the scripts to know.

Q. These radio scripts which have been stipulated that may be attached will represent all the radio scripts mentioning the name "Wed-Lok" which you have been able to find in your files?

A. Yes.

Mr. Hursh: It is stipulated by and between counsel that advertisements appearing in the Theatre Magazine of the Erlanger Theatre, Buffalo, New York, may be introduced in evidence as Exhibit 10.

(Exhibit Number 10 reserved for advertisements in Theatre Magazine of the Erlanger Theatre, Buffalo, New York.)

* * *

(Signature of witness waived.) [33]

CERTIFICATE

State of New York,
County of Erie—ss.

I, Carmen S. DePaolo, a Notary Public in and for the County of Erie and State of New York, duly commissioned and qualified, Do Hereby Certify that the above-named, Harry Gamler, a witness on behalf

Plaintiff's Exhibit Q 3—(Continued)

of the Plaintiff, was by me first duly sworn to testify the truth, the whole truth and nothing but the truth, and that the deposition above set forth was taken at the time and place specified in the notice hereto annexed and pursuant to stipulation between counsel for the respective parties. That said deposition was taken by me stenographically and reduced to typewriting by me.

I Do Further Certify that the signature of the witness was waived.

I Do Further Certify that the plaintiff introduced and marked Plaintiff's Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, which exhibits are submitted herewith.

I Do Further Certify that the reason for taking the aforesaid deposition is that said witness resides more than one hundred miles from the place of trial of this action.

I Do Further Certify that I am neither of Counsel, nor attorney, for either or any of the parties to said cause, and that I am not interested in the event of said suit.

In Witness Whereof, I have hereunto set my hand and seal this 17th day of February, 1949.

[Seal] /s/ CARMEN S. DePAOLO,
Notary Public in and for Erie
County, New York.

My Commission Expires Mar. 30, 1949.

[Endorsed]: Filed Mar. 4, 1949.

PLAINTIFF'S EXHIBIT R-3

Deposition of Benjamin B. Shapiro, taken by the plaintiff, on Friday, February 18, 1949, commencing at 10:00 o'clock a.m., at 411 West Fifth Street, Los Angeles, California, pursuant to the annexed notice of taking deposition, before Mack M. Racklin, a Notary Public in and for the County of Los Angeles, State of California.

Appearances:

For the Plaintiff:

MELLIN & HANSCOM, by
JACK HURSH, ESQ.,
391 Sutter Street,
San Francisco 8, California.

For the Defendants:

NAYLOR & LASSAGNE, by
REGINALD E. CAUGHEY, ESQ.,
811 West Seventh Street,
Los Angeles, California. [2*]

Mr. Hursh: Do we have the usual stipulation, Mr. Caughey, respecting the exceptions to questions, that all objections will be reserved except as to the form of the question?

Mr. Caughey: Is that the stipulation that was entered into by Mr. Naylor?

Mr. Hursh: Yes. It is stipulated that a carbon copy of the notice of the taking of depositions may be attached to this deposition, the original having

* Page numbering appearing at top of page of original certified Transcript of Record.

Plaintiff's Exhibit R 3—(Continued)
(Deposition by Benjamin B. Shapiro.)

been attached to the depositions that were taken at Portland?

Mr. Caughey: That is satisfactory.

Mr. Hursh: Swear the witness.

BENJAMIN B. SHAPIRO

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hursh:

Q. State your name, please.

A. Benjamin B. Shapiro.

Q. And your address?

A. 803 North Elm Drive, Beverly Hills.

Q. What is your occupation?

A. Jeweler. [3]

Q. How long have you been in the jewelry business?
A. 37 years.

Q. Have you ever heard of a firm of manufacturing jewelers by the name of Granat Bros.?

A. Yes.

Q. How long have you known of Granat Bros.?

A. I have known them, personally, for about 24 years, but I have heard of the company for a number of years prior to that.

Q. Do you know of the type of product that is manufactured and sold by Granat Bros.?

A. A line of rings, wedding rings and mountings.

Plaintiff's Exhibit R 3—(Continued)

(Deposition by Benjamin B. Shapiro.)

Q. Are you familiar with the trademark "Wed-Lok"?

A. Yes, sir.

Q. Do you know whose products are identified by the trademark "Wed-Lok"?

A. Granat Bros.

Q. What type of products does the trademark "Wed-Lok" identify?

A. It identifies a wedding ring and an engagement ring.

Q. How long have you known of the use of the trademark "Wed-Lok" to identify wedding rings and engagement rings?

A. I would say about ten years. [4]

Q. When you hear the word "Lok," it is spelled "l-o-k" or "l-o-c-k" used to identify a wedding ring or engagement ring ensemble, with whose product do you identify it?

A. I have always associated it with Granat Bros.

Q. Have you ever advertised the sale of "Wed-Lok" rings in your store?

A. Yes, very extensively.

Q. What type of advertising do you employ?

A. Newspaper and the circular type of advertising.

Q. Do you have the newspaper advertisements with you?

Plaintiff's Exhibit R 3—(Continued)
(Deposition by Benjamin B. Shapiro.)

A. Well, I have the scrap book showing the advertising.

Q. These scrap books, are they kept by your firm in the usual course of business?

A. Yes, they are. They contain all the advertising of the given periods.

Q. I notice on your advertising material that you have placed the paper in which the advertisement appears and the date on which it appears at the bottom of each ad. Is that your customary practice? A. Yes, sir.

Q. In each instance the advertisement was placed in the paper and run on the date that is noted on the ad? A. Yes, sir. [5]

Q. And the first advertisement that I find is one that appeared in the Examiner on May 25, 1947.

A. Correct.

Q. And that ad was placed in the paper by your firm on that date? A. Yes.

Mr. Hursh: I will introduce that as Exhibit No. 1, and is it stipulated we may take photostatic copies of the necessary advertisements and introduce them into evidence in lieu of the original?

Mr. Caughey: Yes.

Mr. Hursh: I will just mark it and put a circle around the numerals so we can identify them.

Mr. Caughey: All right.

Q. (By Mr. Hursh): That advertisement announced a "Wed-Lok" ring ensemble, does it?

Plaintiff's Exhibit R 3—(Continued)

(Deposition by Benjamin B. Shapiro.)

Mr. Caughey: That is objected to; the advertisement speaks for itself.

The Witness: Yes.

Q. (By Mr. Hursh): The next advertisement is one that—and it is noted that it appeared in the Herald on May 29, 1947, and in the Examiner on June 4, 1947. Did that advertisement appear on or in those two papers on the respective dates?

A. That same advertisement, yes.

Mr. Hursh: I will introduce that into evidence as [6] Exhibit No. 2.

Mr. Caughey: There is no objection, with the understanding that that portion of the ad which has no reference to any of the matters in issue may be disregarded.

Mr. Hursh: That is stipulated to, yes; in all of these advertisements where any other merchandise is advertised that will be disregarded. The only part of the advertisement we are interested in is that referring to the sale of "Wed-Lok" rings.

Mr. Caughey: All right.

Q. (By Mr. Hursh): You next have an ad that appeared in the Herald on June 5, 1947, and in the Examiner on June 8, 1947.

A. Yes.

Mr. Hursh: I will introduce that as Exhibit No. 3.

Q. That ad appeared in the respective papers and on the respective dates, is that right?

Plaintiff's Exhibit R 3—(Continued)
(Deposition by Benjamin B. Shapiro.)

A. Yes, sir.

Q. On the next page, in which a "Wed-Lok" advertisement appears, you have the advertisement of the Examiner on June 15, 1947, and of the Examiner on June 22, 1947, and both of those advertisements were placed in the paper on those respective dates? A. Yes.

Mr. Hursh: I will introduce both of those as Exhibit No. 4. [7]

Q. (By Mr. Hursh): I find another ad that appeared in the News on June 19, 1947. Was that advertisement run in the paper on that date by your firm? A. Yes, sir.

Mr. Hursh: I will introduce that advertisement as Exhibit No. 5.

Q. (By Mr. Hursh): The next advertisement appearing in the book is one that was run in the Examiner on June 27, 1947, and did that advertisement appear in the Examiner on that date?

A. Yes, sir.

Mr. Hursh: I will introduce that as Exhibit No. 6.

Q. (By Mr. Hursh): The next advertisement I find is one that appeared in the Herald on July 10, 1947. Did your firm place that advertisement in the Herald on that date? A. Yes, sir.

Mr. Hursh: I will introduce that into evidence as Exhibit No. 7.

Q. (By Mr. Hursh): On the next page I find

Plaintiff's Exhibit R 3—(Continued)

(Deposition by Benjamin B. Shapiro.)

an advertisement that appeared in the Examiner and in the Herald on July 19, 1947. Did that advertisement appear in the paper on that date?

A. Yes.

Mr. Hursh: I will introduce that as Exhibit No. 8.

Q. (By Mr. Hursh): I find an advertisement in the [8] Herald on the date of July 17, 1947, and an advertisement that was in the Examiner on July 20, 1947. Were those advertisements placed in the respective papers on those dates? A. Yes.

Mr. Hursh: I will introduce the entire page on which the two advertisements appear as Exhibit No. 9.

Q. (By Mr. Hursh): The next advertisement is one that appeared in the Herald on July 24, 1947, and in the Examiner on July 28, 1947. Well, strike that question.

The next advertisement is one that appeared in the Herald on July 31, 1947, and in the Examiner on August 3, 1947. Also, the advertisements that appeared in the Herald on August 7th, 1947, and in the Examiner on August 10, 1947. Were those advertisements placed in the respective papers and on the respective dates as shown on the exhibit?

A. Yes, sir.

Mr. Hursh: I will introduce that as Exhibit No. 10. Exhibit 10 will include both of the advertisements, all of the advertisements, appearing on that page.

Plaintiff's Exhibit R 3—(Continued)
(Deposition by Benjamin B. Shapiro.)

Q. (By Mr. Hursh): The next advertisement is one that appeared in the Herald on August 14, 1947, and in the Examiner on August 17, 1947. Was that advertisement placed in those respective papers on the dates mentioned? A. Yes, sir. [9]

Mr. Hursh: I will introduce that as Exhibit No. 11.

Q. (By Mr. Hursh): I find an advertisement that appears in the Times on August 31, 1947, and in the Herald on September 4, 1947. Was that advertisement placed in those papers on those dates?

A. Yes, sir.

Mr. Hursh: I will introduce that as Exhibit No. 12.

Q. (By Mr. Hursh): I find an advertisement that appeared in the Examiner on September 6, 1947. Did your firm place that advertisement in the paper on that date? A. Yes, sir.

Mr. Hursh: I will introduce that as Exhibit No. 13.

Q. (By Mr. Hursh): I next find an advertisement that appeared in the News on September 11, 1947. Did your firm place an advertisement in the paper on that date? A. Yes, sir.

Mr. Hursh: I will introduce that as Exhibit No. 14.

Q. (By Mr. Hursh): I find an advertisement that appeared in the Herald on September 25, 1947,

Plaintiff's Exhibit R 3—(Continued)

(Deposition by Benjamin B. Shapiro.)

and in the Examiner on September 28, 1947. Was that advertisement placed in those respective papers on the dates mentioned by your firm? A. Yes.

Mr. Hursh: I will introduce that as Exhibit No. 15.

Q. (By Mr. Hursh): I next find an advertisement in the Examiner on October 12, 1947, advertising "Wed-Lok." [10] Was that advertisement placed in the paper on that date by your firm?

A. Yes, sir.

Mr. Hursh: I will introduce that as Exhibit No. 16.

Q. (By Mr. Hursh): The next advertisement is one appearing in the Herald on November 22, 1947. Was that advertisement placed in that paper on that date? A. Yes, sir.

Mr. Hursh: I will introduce that as Exhibit No. 17.

Q. (By Mr. Hursh): I find the next advertisement one that appears in the Times on November 30, 1947, and in the News on December 3, 1947. Was that advertisement placed in those papers on the respective dates mentioned? A. Yes, sir.

Mr. Hursh: I will introduce that as Exhibit No. 18.

Q. (By Mr. Hursh): The next advertisement is where you advertise the sale of "Wed-Lok" ring ensembles, appearing in the Examiner on December 14, 1947, and in the Herald on December 18, 1947.

Plaintiff's Exhibit R 3—(Continued)

(Deposition by Benjamin B. Shapiro.)

Was that advertisement placed in the papers by your firm on those dates? A. Yes, sir.

Mr. Hursh: I will introduce that as Exhibit No. 19.

Q. (By Mr. Hursh): The next one is one that appeared in the Examiner on December 21, 1947. Was that advertisement placed in the paper by your firm? A. Yes, sir. [11]

Mr. Hursh: I will introduce that as Exhibit No. 20.

Q. (By Mr. Hursh): The next advertisement appearing in the Times on December 19, 1947, and that was placed in the paper by your firm, was it?

A. Yes.

Mr. Hursh: We will introduce that as Exhibit No. 21.

Q. (By Mr. Hursh): The next advertisement is one that appeared in the Examiner on December 28, 1947. Did your firm place that in the paper on that date? A. Yes, sir.

Mr. Hursh: We will introduce that as Exhibit No. 22.

Q. (By Mr. Hursh): The next advertisement is one that was in the Herald on January 15, 1948, and did your firm place that advertisement in the paper on that date? A. Yes, sir.

Mr. Hursh: We will introduce that as Exhibit No. 23 into evidence.

Q. (By Mr. Hursh): I find an advertisement

Plaintiff's Exhibit R 3—(Continued)

(Deposition by Benjamin B. Shapiro.)

that appeared in the Sunday Examiner on January 17, 1948. Did your firm place that advertisement in the paper on that date? A. Yes.

Mr. Hursh: We will introduce that as Exhibit No. 24. Evidently, one of these dates is Sunday, January 18th, on Exhibit 24 instead of the 17th.

Q. (By Mr. Hursh): I find next an advertisement that [12] appeared in the Examiner on February 8, 1948. Was that advertisement placed in the paper by your firm? A. Yes.

Mr. Hursh: I would like to introduce that into evidence as Exhibit No. 25.

Q. (By Mr. Hursh): The next advertisement is one that appeared in the Examiner on February 29, 1948, and that was placed in the paper by your firm? A. Yes, sir.

Mr. Hursh: I will introduce that as Exhibit No. 26.

Q. (By Mr. Hursh): On the same page I find one that appeared in the Times under date of February 29, 1948. That also was placed in the paper by your firm? A. Yes.

Q. Both of those advertisements appearing on this particular page will be included in No. 26.

Now, I find an advertisement that appeared in the Times on March 22, 1948, and that advertisement was placed in the Times on March 22, 1948, was it, by your firm? A. Yes, sir.

Plaintiff's Exhibit R 3—(Continued)
(Deposition by Benjamin B. Shapiro.)

Mr. Hursh: We will introduce that as Exhibit No. 27.

Mr. Caughey: What is that?

Mr. Hursh: That was on March 22, 1948. That was Exhibit No. 27.

Q. (By Mr. Hursh): The next advertisement is one dated March 29, 1948, in the Times, and that was placed [13] in the paper by your firm?

A. Yes.

Mr. Hursh: We will introduce that as Exhibit No. 28.

Q. (By Mr. Hursh): I find one that appeared in the Examiner on April 4, 1948, and that was placed in the paper by your firm? A. Yes.

Mr. Hursh: I will introduce that as Exhibit No. 29.

Q. (By Mr. Hursh): And in the Herald on April 8, 1948, the "Wed-Lok" ad appeared in the paper. Was that placed in the paper by your firm?

A. Yes.

Mr. Hursh: That will be Exhibit No. 30 that we will introduce into evidence.

Q. (By Mr. Hursh): And an advertisement in the Times under date of April 11, 1948. Did your firm place that advertisement in the paper?

A. Yes, sir.

Mr. Hursh: That will be Exhibit No. 31.

Q. (By Mr. Hursh): I find an advertisement that appeared in the Examiner on March 21, 1948,

Plaintiff's Exhibit R 3—(Continued)

(Deposition by Benjamin B. Shapiro.)

advertising the "Wed-Lok" ring ensembles. Was that placed in the paper by your firm?

A. Yes.

Mr. Hursh: That will be Exhibit No. 32.

Mr. Caughey: The Examiner, was it? [14]

Mr. Hursh: Yes.

Q. (By Mr. Hursh): I next find an advertisement that appeared in the Examiner on April 10, 1948, and one in the Examiner on April 19, 1948, and did your firm place those advertisements in the paper?

A. Yes. Is that page out of place?

Q. Well, it is just out of place, and to keep it in sequence, we will keep it where it is in the book.

I will introduce that as Exhibit No. 33.

I find an advertisement that appeared in the Examiner on April 25, 1948, and that was placed in the paper by your firm? A. Yes.

Mr. Hursh: I will introduce that into evidence as Exhibit No. 34.

Q. (By Mr. Hursh): I find an advertisement in the Times dated May 2, 1948, advertising the "Wed-Lok" ensembles. Did that advertisement appear in the paper on that date? A. Yes.

Mr. Hursh: We will introduce that as Exhibit No. 35.

Q. (By Mr. Hursh): I next find an advertisement in the Examiner under date of May 23, 1948. Was that placed in the paper by your firm?

Plaintiff's Exhibit R 3—(Continued)
(Deposition by Benjamin B. Shapiro.)

A. Yes.

Mr. Hursh: That will be introduced as Exhibit No. 36. [15]

Q. (By Mr. Hursh): Also one in the Examiner under date of May 31, 1948. Was that placed in the paper by your firm? A. Yes.

Mr. Hursh: That will be Exhibit No. 37.

Q. (By Mr. Hursh): I find an advertisement that appeared in the Times on June 22, 1948, and that was placed in the paper by your firm, was it?

A. Yes.

Mr. Caughey: That was in the Times?

Mr. Hursh: Yes. That will be Exhibit No. 38 into evidence.

Q. (By Mr. Hursh): The next advertisement is one that appeared in the Examiner on June 27, 1948. Did your firm place that in the paper on that date?

A. Yes, sir.

Mr. Hursh: That will be Exhibit No. 39.

Q. (By Mr. Hursh): The next advertisement is one that appeared in the Times on July 19, 1948, and did your firm place that advertisement in the paper? A. Yes, sir.

Mr. Hursh: I would like to introduce that into evidence as Exhibit No. 40.

Q. (By Mr. Hursh): I find an advertisement that appeared in the Examiner on July 25, 1948. Did your firm place that advertisement in the paper? [16] A. Yes, sir.

Plaintiff's Exhibit R 3—(Continued)

(Deposition of Benjamin B. Shapiro.)

Mr. Hursh: That will be Exhibit No. 41 into evidence.

Mr. Caughey: That was in the Examiner, was it?

Mr. Hursh: Yes, the Examiner.

Q. (By Mr. Hursh): The next advertisement is one that appeared in the Times on July 30, 1948. Did your firm place that advertisement in the paper? A. Yes.

Mr. Hursh: That will be Exhibit No. 42.

Q. (By Mr. Hursh): The next advertisement is one in the Examiner on August 13, 1948, and did your firm place that one in the paper on that date?

A. Yes, sir.

Mr. Hursh: We will introduce that as Exhibit No. 43.

Q. (By Mr. Hursh): I find an advertisement in the Times of August 20, 1948. Was that advertisement placed in the paper by your firm on that date? A. Yes, sir.

Mr. Hursh: That will be Exhibit No. 44.

Q. (By Mr. Hursh): I find an advertisement in the Examiner on September 5, 1948, advertising the "Wed-Lok" ensemble. Was that advertisement placed in the paper by your firm?

A. Yes, sir.

Mr. Hursh: That will be Exhibit No. 45.

Q. (By Mr. Hursh): I find an advertisement that [17] appeared in the Times on September 12,

Plaintiff's Exhibit R 3—(Continued)
(Deposition of Benjamin B. Shapiro.)

1948, advertising the "Wed-Lok" rings. Was that advertisement placed in the paper by your firm?

A. Yes.

Mr. Hursh: We will introduce that as Exhibit No. 46.

Q. (By Mr. Hursh): On the following page is an advertisement that appeared in the Herald on September 16, 1948. Was that ad placed in the paper by your firm? A. Yes, sir.

Mr. Hursh: We will introduce that as Exhibit No. 47.

Q. (By Mr. Hursh): I find an advertisement in the Examiner on September 23, 1948, advertising the "Wed-Lok" sets. Was that placed in the paper by your firm? A. Yes, sir, it was.

Mr. Hursh: That will be Exhibit No. 48.

Q. (By Mr. Hursh): Also, an advertisement in the Times under date of September 28, 1948. Was that placed in the paper by your firm?

A. Yes.

Mr. Hursh: That will be Exhibit No. 49.

Q. (By Mr. Hursh): An advertisement that appeared in the Times on October 10, 1948, and was that placed in the paper by your firm?

A. Yes, sir.

Mr. Hursh: That will be Exhibit No. 50.

That completes the second book. [18]

Q. (By Mr. Hursh): I find an advertisement in the Herald dated October 21, 1948, advertising

Plaintiff's Exhibit R 3—(Continued)

(Deposition of Benjamin B. Shapiro.)

the "Wed-Lok." Was that advertisement placed in the paper by your firm? A. Yes.

Mr. Hursh: That will be Exhibit No. 51.

Q. (By Mr. Hursh): On the same page as one that appeared in the Examiner on October 22, 1948. Was that placed in the paper by your firm?

A. Yes.

Mr. Hursh: That will be included in Exhibit 51.

Q. (By Mr. Hursh): The next advertisement is one in the Times on October 31, 1948. Was that placed in the paper by your firm? A. Yes, sir.

Mr. Hursh: That will be Exhibit No. 52.

Q. (By Mr. Hursh): I find an advertisement in the Examiner on December 3, 1948, advertising the "Wed-Lok" ensemble. Was that placed in the paper by your firm? A. Yes.

Mr. Hursh: That will be Exhibit No. 53.

Q. (By Mr. Hursh): I find an advertisement in the Examiner dated December 12, 1948. Was that placed in the paper by your firm? A. Yes.

Mr. Hursh: That will be introduced as Exhibit No. 54. [19]

I believe that is all of those.

Q. (By Mr. Hursh): I also find in your compilation of the advertisements a notation that an advertisement appeared on January 2, 1949, in the Times. Do you know whether or not an advertisement was placed in the paper on that date?

A. Yes.

Plaintiff's Exhibit R3—(Continued)
(Deposition of Benjamin B. Shapiro.)

Mr. Hursh: Is it stipulated we may have a photostatic copy of that advertisement introduced into evidence as the exhibit next in number?

Mr. Caughey: Yes, no objection. What date was that?

Mr. Hursh: January 2, 1949. That will be introduced into evidence as Exhibit No. 55.

Mr. Caughey: In what paper?

Mr. Hursh: The Times.

Q. (By Mr. Hursh): Mr. Shapiro, you have also handed me a schedule of "Wed-Lok" ads showing the dates and the size of the advertisement, the particular paper in which the advertisement appeared, and the amount that the ad cost your firm.

A. Yes.

Q. Was this compilation made under your direction? A. Yes.

Mr. Hursh: I will introduce that compilation.

Mr. Caughey: May I see it first? [20]

Mr. Hursh: Sure.

Mr. Caughey: All right.

Mr. Hursh: I will introduce that into evidence as Exhibit No. 56, subject to correction, if any error is found.

Mr. Caughey: I want to do this. I would like to reserve any objection I have until I have had an opportunity of cross-examining the witness as to that particular exhibit.

Mr. Hursh: All right.

Plaintiff's Exhibit R3—(Continued)

(Deposition of Benjamin B. Shapiro.)

Q. (By Mr. Hursh): You have also produced some circulars. Can you identify the first circular that you produced? A. Yes, sir.

Q. When was that circular put out by your firm?

A. That was Christmas of 1947.

Q. I find on Pages 12 and 13 reference to the sale of "Wed-Lok" ring ensembles by your firm.

A. Yes, sir.

Q. How was this circular distributed?

A. By mail; they were mailed out.

Mr. Hursh: Do you want to see this?

Mr. Caughey: Yes. All right.

Mr. Hursh: I will introduce Pages 12 and 13 into evidence as Exhibit No. 57.

Q. (By Mr. Hursh): Also, a second circular that was [21] sent out by your firm; can you identify that? A. Yes, sir.

Q. Will you tell us what that circular is?

A. Well, there were 50,000 of these printed, and that went out in the spring of 1948. By the way, there were 100,000 printed of the last one. If you want that information, I have it for you.

Q. You are referring now to Exhibit No. 57?

A. The Christmas catalogue, yes.

Q. And how many copies of this were sent out by your firm? A. 100,000.

Q. In this catalogue that was sent out in the spring of 1948, do you mention the "Wed-Lok" rings? A. Yes, sir.

Plaintiff's Exhibit R3—(Continued)
(Deposition of Benjamin B. Shapiro.)

Q. And that appears on the back page of that circular? A. Yes.

Mr. Hursh: I will introduce this circular as Exhibit No. 58.

Q. (By Mr. Hursh): Can you state how many of those were sent out? A. 50,000.

Q. You have also produced a third circular. Can you identify that?

A. That was the Christmas circular of 1948, and 100,000 of those were mailed out. [22]

Q. Do you mention the sale of the "Wed-Lok" rings in this circular? A. Yes, sir.

Mr. Hursh: I will introduce this page into evidence as Exhibit No. 59.

Q. (By Mr. Hursh): How many copies of Exhibit No. 59 did your firm send out?

A. 100,000.

Q. Have you ever heard of a ring ensemble sold under the name of "Feature Lock"? A. Yes.

Q. When you first heard of the trade-mark "Feature Lock," used in connection with a ring ensemble, with whose product did you identify it?

A. With the Granat product.

Q. What was your first impression when you first heard of the trade-mark "Feature Lock" as applied to ring ensembles?

A. Well, I felt that any ring that would be named "lock" was a Granat product.

Q. Will you state whether or not you identified

Plaintiff's Exhibit R3—(Continued)

(Deposition of Benjamin B. Shapiro.)

the trade-mark "Feature Lock" with a Granat product the first time you heard of it?

A. I thought it was, yes. They have used the trade name "lock" on rings for a good many years and I automatically took it that any ring with that name would be a [23] Granat product.

Q. Will you state whether or not the first time you heard the trade-mark "Feature Lock" used in conjunction with a ring ensemble that you were confused as to actually whose product that trade-mark was applied to?

A. Later there was some confusion but at first I thought it was a Granat product, but we later understood that it wasn't.

Q. Do you sell "Wed-Lok" rings in your store in Los Angeles? A. Yes, sir.

Q. And do you consider the word "lok" as used by you in the sale of "Wed-Lok" ring ensembles to be an important part of the trade-mark "Wed-Lok"?

Mr. Caughey: That is objected to as calling for the conclusion of the witness, and I will also object to the form of the question. It is a leading question, obviously a leading question, and on the further ground that there is no foundation laid that this witness is qualified to answer such a question.

Mr. Hursh: He has already answered it.

The Witness: Yes.

Plaintiff's Exhibit R3—(Continued)
(Deposition of Benjamin B. Shapiro.)

Q. (By Mr. Hursh): Will you state whether or not the use of the trade-mark "Wed-Lok" in the sale of ring ensembles by your store, that you considered the word "lok" to be a dominant part of the trade name "Wed-Lok"? [24]

Mr. Caughey: The same objection.

The Witness: Yes, indeed.

Q. (By Mr. Hursh): Have you ever had customers enter your store and ask for wedding ring ensembles, wedding rings and engagement ensembles under the trade name "Wed-Lok"?

A. We certainly have.

Q. And how often does this occur?

A. Well, with the amount of advertising that we put out, why, it occurs continuously or we wouldn't spend the money we have. We have spent tens of thousands of dollars to bring customers in on that "Wed-Lok" feature.

Q. Have you ever had customers enter your store and ask for wedding ring and engagement ring ensembles by calling for the "lok" ensemble?

A. Yes.

Q. What type of quality of product does Granat Bros. manufacture itself?

Mr. Caughey: That is objected to as calling for the conclusion of the witness.

Mr. Hursh: This witness has been in the jewelry business for 25 or 30 years and is fully conversant with jewelry products and over this period of time

Plaintiff's Exhibit R 3—(Continued)

(Deposition of Benjamin B. Shapiro.)

he has undoubtedly familiarized himself with the various qualities of jewelry on the market and is fully capable of determining the quality of the product sold by a manufacturer. Will [25] you answer the question?

The Witness: One of the very best manufactured lines of jewelry in the country.

Q. (By Mr. Hursh): Can you tell us the reputation that Granat Bros. products enjoy in the Los Angeles area?

Mr. Caughey: That is objected to as calling for the conclusion of the witness; what this witness might think is no proof of what the reputation actually is.

The Witness: The very best.

Q. (By Mr. Hursh): Do you know the value of the "Wed-Lok" ring ensembles that have been purchased by your company over the past two years?

A. A trifle under \$80,000.

Q. And have you the order forms that have been employed by your concern in ordering "Wed-Lok" rings from Granat Bros.?

A. Yes, we have the exact orders and the dates.

Q. When was the first time that you purchased "Wed-Lok" rings from Granat Bros.?

Mr. Caughey: That is objected to as asking a question which is not borne out by the evidence. There is nothing in the evidence shown that he has

Plaintiff's Exhibit R 3—(Continued)

(Deposition of Benjamin B. Shapiro.)

purchased any rings from Granat Bros. and those particular documents——

Mr. Hursh: Well, I will withdraw the question and ask you:

Q. When is the first time you purchased "Wed-Lok" [26] ring ensembles?

A. I would say ten years ago.

Q. What type of ring ensemble was that?

A. It was a ring that was worn together and stayed put; it didn't turn around on the finger.

Q. What means were used to keep the settings in alignment, if you know?

A. Well, it was a sort of grooved principle. It wasn't, of course, the final development which was the very latest "Wed-Lok" which was the snap feature. However, I was told by the Granat Bros.——

Mr. Caughey: That is objected to as calling for hearsay testimony, if he is going into this kind of testimony. Now, I think he should be instructed to state only facts and not hearsay if he is going into testimony of that kind.

The Witness: Granat Bros. told me that they were developing something sensational and something that was extraordinary in the ring combination, somewhere in the fall of '35, and in 1935 was when they told me they were developing something that would revolutionize the entire industry. That was a refinement of their "Wed-Lok" ring that they have been making for many years.

Plaintiff's Exhibit R 3—(Continued)

(Deposition of Benjamin B. Shapiro.)

Q. (By Mr. Hursh): When was the first time——

Mr. Caughey: A motion is made to strike that portion of the testimony referring to conversation with Granat [27] Bros.

Q. (By Mr. Hursh): When was the first time you purchased "Wed-Lok" rings of this new type, that of the little snap lock or click feature?

A. That was back in May of 1947.

Q. And have you the records of your firm showing your purchase of the "Wed-Lok" ring ensemble from May, 1947?

A. Yes, I have them right here, the exact dates and the amount of the purchase and the different styles.

Q. That runs from May 14, 1947, to November 10, 1948, does it? A. Yes, sir.

Q. These are the order blanks of your firm with respect to the "Wed-Lok" ring sets? A. Yes.

Mr. Hursh: I will introduce the entire set of orders as Exhibit No. 60 into evidence. It is stipulated that photostatic copies of these records may be made and substituted for the originals?

Mr. Caughey: That is right.

Mr. Hursh: There are 12 sheets included in Exhibit No. 60.

Q. (By Mr. Hursh): Have you made a compilation of the exact amount of merchandise purchased as represented by Exhibit No. 60? [28]

Plaintiff's Exhibit R 3—(Continued)

(Deposition of Benjamin B. Shapiro.)

A. I have it here; \$77,396.

Q. Referring to Exhibit No. 60, you have noted on the first page the order dated "5-14-47" that there may be some possible discrepancy with respect to whether or not certain amounts, certain of the items were "Wed-Lok" rings. Will you explain the situation with respect to that particular page of the order blanks?

A. The possibility is that the orders on this page are also "Wed-Loks" but in writing the order down they overlooked mentioning "Wed-Lok" so that would mean that out of \$77,396 worth of purchases, there is roughly about \$279 worth that maybe would not be "Wed-Lok," but I am not sure.

Mr. Hursh: I believe that is all of the direct examination of the witness. You may cross-examine.

Cross-Examination

By Mr. Caughey:

Q. I note in your testimony, Mr. Shapiro, that you have used the word "ensemble" in connection with the "Wed-Lok" rings. A. Yes.

Q. Do you also use the word "ensemble" in connection with the sale of other rings other than "Wed-Lok" rings?

A. Well, any combination of two rings could be [29] termed "ensemble."

Q. And you have so advertised them, is that right, other than "Wed-Lok" rings?

Plaintiff's Exhibit R 3—(Continued)

(Deposition of Benjamin B. Shapiro.)

A. I would say that any combination of rings would be an ensemble.

Q. My next question is: In advertising other rings other than "Wed-Lok" rings, do you also refer to them as "ensembles" where you have a wedding and engagement ring together?

A. Not always.

Q. Sometimes you do? A. Sometimes, yes.

Q. You do not always advertise "Wed-Lok" rings as ensembles, do you?

A. Always, that is the only way we can.

Q. And you always use the word "ensemble" in your advertising? A. In "Wed-Lok," we do.

Q. You are sure of that? A. Yes.

Q. Now, the rings that you sell and call "Wed-Lok" rings, are they locked together?

A. They can be locked together and I think as a rule they are.

Q. When you sell them, you point out that that is a feature of them that they can be locked together, is that [30] correct?

A. Yes, sir, that is right.

Q. When you advertise the ring, do you always point out that feature?

A. When we advertise a "Wed-Lok," it is generally understood, that it is locking, that it has a locking feature of the two rings. It couldn't very well be one ring because if it were, it wouldn't have anything to lock to.

Plaintiff's Exhibit R 3—(Continued)
(Deposition of Benjamin B. Shapiro.)

Q. I call your attention to Exhibit No. 36, Mr. Shapiro, in the advertisement; the words "locked together," are in different type than some of the other wording of the ad. Isn't that so?

A. That could be a typographical——

Q. I am asking you if that isn't so, if that isn't the fact in that ad?

A. No, I don't think so.

Q. You wouldn't say that the words "locked together" are in a different kind of type than the words immediately preceding and after, in Line 2 of the comments in that ad?

A. I say that it is exactly the same type. The only difference is that one is a capital letter and——

Q. Then you testify that the typing, or, rather, the type of the word "that" which immediately precedes the words "locked together," that they are the same, [31] that that word "that" is the same; is that your testimony?

A. The type is exactly the same; absolutely.

Q. I am not talking about the size of the type.

A. The type is exactly the same.

Mr. Hursh: If you don't understand the question, if it isn't understandable to you, make sure that you understand the question before you answer it.

Q. (By Mr. Caughey): I will ask if the appearance of the type, Mr. Shapiro, the words I have referred to "locked together," do they appear the

Plaintiff's Exhibit R 3—(Continued)

(Deposition of Benjamin B. Shapiro.)

same and look the same as the words that immediately precede it?

A. Well, as I understand the question, I would say that they are the same.

Q. All right, that is all, as far as that question is concerned.

Now, you also sell in your store engagement rings and wedding rings. You sell them together as an ensemble?

A. Sometimes, yes.

Q. Sometimes? A. Yes.

Q. Now, when you sell "Wed-Lok" rings, do you distinguish that ensemble of "Wed-Lok" rings from the ensemble of engagement rings and wedding rings by the fact that they do lock together or can be locked together?

A. We don't have to. The customer does that for us; they come in and demand and want the locking ring. [32]

Q. In other words, they ask many times for a locking ring?

A. Yes, they ask for a "Wed-Lok."

Q. My question is: Do they ask for a locking ring?

A. They ask for a ring that locks together, very often.

Q. Do they once in a while come in and ask for a "lok" ring?

A. Once in a while.

Q. When they ask for a "lok" ring, you show

Plaintiff's Exhibit R 3—(Continued)
(Deposition of Benjamin B. Shapiro.)

them a ring that can be locked together, is that correct?

A. Well, when they are questioned, they are asked, and if you refresh them, they want a "Wed-Lok," the thing they have seen us or seen advertised in other cities throughout the east and in national magazines.

Q. Just wait a second, please, Mr. Shapiro. If you will just answer my question and not go on, we will get along better together. Whether these people saw them in the east is something that they would have to tell you and that is merely hearsay testimony, so it does not belong in this record.

Now, Mr. Shapiro, LeRoy's is what, a partnership?

A. Yes, a partnership.

Q. You started handling this present type of "Wed-Lok" ring in May of 1947?

A. Well, we have handled "Wed-Lok"— [33]

Q. I am talking about the one shown by these advertisements. I said "the present type."

A. When Granat developed the new type, we started handling them.

Q. That was in May of 1947?

A. I would say about that time.

Q. Prior to May of '47, when did you previously make a purchase of a ring that you sold under the word "Wed-Lok"?

Plaintiff's Exhibit R 3—(Continued)

(Deposition of Benjamin B. Shapiro.)

A. Those records we have on file. I could get the information.

Q. As a matter of fact, it was a number of years, was it? A. No.

Q. Are you sure about that?

A. As far as I recall, we had the Granat "Wed-Lok" continuously for approximately ten years in different types that they made and different developments; they have continuously refined and developed and worked out the idea.

Q. So it is your testimony that for the last ten years that you have had "Wed-Lok" rings in your store and sold them over your counter, which you secured from Granat's, is that right?

A. During that period, yes, I would say at different times.

Q. I am talking about the last ten years, continuously for the last ten years. [34]

A. Well, there was a period during the war that we wanted them but we couldn't get them. Granat couldn't produce them.

Q. Did you have them continuously for the last ten years?

A. We had them as long as they were available, as long as they were able to supply them; we had orders on file.

Q. You have brought no records to show any previous purchases prior to May of 1947?

A. We easily could have if we knew that was

Plaintiff's Exhibit R 3—(Continued)

(Deposition of Benjamin B. Shapiro.)

what you wanted. We could have gotten the records.

Q. As a matter of fact, Granat didn't manufacture and sell any rings called "Wed-Lok" rings for a number of years during the war, did they?

A. On the contrary; they have continuously and uninterruptedly outside of the periods that they couldn't get the material that the government impounded, or couldn't do it for manpower reasons, but they have the material and the manpower and they were continually making and selling——

Q. You have no records showing that prior to May of 1947 and between that and the year 1940, when you purchased "Wed-Lok" rings from Granat Bros. or any other concern; you haven't brought any records here? A. I think we could. [35]

Q. I am not asking you if you have any records available——

A. If you would have asked for them here.

Q. I am not calling you as a witness, Mr. Shapiro.

Now, I believe you testified that you considered the word "lok" an important part of the word, of the complete word "Wed-Lok".

A. Indeed, I do. That is the most important.

Q. Then if the defendants in this case were using the word "Feature Ring," you wouldn't think there would be any possibility of confusion with "Wed-Lok." Is that correct?

A. All I would say is this: That as far as any

Plaintiff's Exhibit R3—(Continued)

(Deposition of Benjamin B. Shapiro.)

ring called "lok" and if it has any similarity to the Granat "lok," that would be something for you lawyers to determine what the infringements, if any, are.

Q. You had no difficulty on direct examination stating that you were confused between the words "Feature Lock" and "Wed-Lok." You so testified, did you not?

A. I, as a jeweler, as an expert, could tell.

Q. But I am asking you as a jeweler and as an expert, would you be confused between the words "Feature Ring" and "Wed-Lok," between those two?

A. I don't get the question. Will you restate that, please?

Q. I am asking you if "Feature Lock" did not use [36] the word "lock" and substituted therefor the word "ring" and so they sold their rings under the name of "Feature Ring," whether or not in your opinion you would think that would be confusingly similar with "Wed-Lok"?

A. I would say that would be a subterfuge.

Q. I am not asking you that, Mr. Shapiro. I am asking you whether you would be confused, as a person who is skilled in this art, between those two words?

A. Yes, to be frank, I would be.

Q. And why?

A. Because of the substitution and the faces there, that they would have to be examined very closely.

Plaintiff's Exhibit R3—(Continued)
(Deposition of Benjamin B. Shapiro.)

Q. What faces are you talking about would have to be examined closely?

A. If anyone were infringing upon any established patent and made the article as close to the original, it would fool anyone. I could be fooled.

Q. Then, in other words, you are giving your opinion as to confusion, you are taking into consideration the fact that Granat Bros. have a patent upon their ring which they called "Wed-Lok." Is that correct?

A. State that question again.

Mr. Caughey: Read it, please.

(Question read.)

The Witness: "Wed-Lok" ring and the "Wed-Lok" principle is the thing that we have invested a tremendous [37] amount of money and sell to the public as it was originally created by the manufacturer of that product and any substitutions by any name are confusing and misleading, both to the dealer as well as the purchaser.

Q. (By Mr. Caughey): As I understand your testimony, then, if the "Feature Lock" instead of selling their rings under the words "Feature Lock" were selling them under the words "Quick Lock," your answer as to confusion would be the same. Is that correct?

A. By the same token, if anyone——

Q. Just answer my question. Give me an answer yes or no. Can't you do that?

Plaintiff's Exhibit R3—(Continued)

(Deposition of Benjamin B. Shapiro.)

A. It is one of those, I guess, you couldn't very well give a yes or no answer to.

Q. Why not?

A. Because it is not one of those questions.

Mr. Caughey: Read the question.

(Question read.)

The Witness: There would be confusion, no doubt.

Q. (By Mr. Caughey): That confusion would be because the word "lock" was used as a part of the word under which the selling was being made?

A. It would be a combination of both; the name as well as the principle, if it was like the original.

Q. Then, as I understand your testimony—and if I am wrong, please tell me—you feel that being as Granat [38] Bros. were the first ones to bring out, as far as you know, a ring which locked together by some means, that they should have a superior place in the trade because they at first brought it out. Is that correct?

A. I am only concerned, if you want me to answer this question, with one thing. I have a tremendous investment in merchandise that I bought and was assured that it was patented and would not be infringed upon, and as evidenced by the amount of money that we have spent in advertising and the purchases that we have made, I feel that Granat Bros. should protect me as a dealer against infringements of merchandise sold with a similar name or

Plaintiff's Exhibit R3—(Continued)

(Deposition of Benjamin B. Shapiro.)

merchandise that is infringing upon the patent, which, of course, again I say that is something that if there is an infringement, has to be fought out and worked out with the principals. I am only buying the goods to resell to the customers.

Q. Now, you have the exclusive, as far as "Wed-Lok" is concerned, the "Wed-Lok" rings are concerned, do you not, in at least downtown Los Angeles?

A. Not to my knowledge, no, we don't; there are others that handle the ring.

Q. You have used the word "exclusive" in a number of these ads that have been placed into evidence. When you used that word "exclusive," in what sense did you use it? [39]

A. Maybe right in our block or in our street but not necessarily in the city. We have never said in any ad that we have an exclusive in Los Angeles.

Q. What do you mean when you say, when you use the word "exclusive" in your ads?

A. Just that it is exclusive in our particular area.

Q. Then what is that area?

A. It might be the street and, as far as I know, it is the street. There are many more jewelry stores on Broadway and, to the best of my knowledge, we are the only ones. In fact, I am sure we are the only ones that handle it on Broadway.

Q. Let's take Spring Street, downtown Spring

Plaintiff's Exhibit R3—(Continued)

(Deposition of Benjamin B. Shapiro.)

Street. Are there any jewelers on downtown Spring Street that handle it other than yourself?

A. I don't know.

Q. You don't know any that do, do you?

A. I never investigated and it really never made much difference.

Q. How about Hill Street?

A. I don't know.

Q. As a matter of fact, do you know any downtown jewelers that handle "Wed-Lok" rings other than yourself?

A. There are jewelers that handle them.

Q. I am asking about downtown jewelers. [40]

A. Yes, there are. I could get that information, if I was ever concerned, I could get it from the company, but it never concerned me.

Q. So when you use the word "exclusive" in your ads, you were just referring to a limited area on Spring Street, is that right, where you had the exclusive right to sell the rings?

A. Well, not on Spring Street.

Q. On Broadway? A. Yes, on Broadway.

Q. Are these advertisements that appear in these, or that are in evidence, are those advertisements advertisements that were made up by your advertising manager or some concern that handles your advertising?

A. Yes. You have asked about our using the term "exclusive." That wasn't used until very re-

Plaintiff's Exhibit R3—(Continued)

(Deposition of Benjamin B. Shapiro.)

cently, due to the very fact of considerable confusion in the minds of the customers in regard to other rings called by the name of "lok," and that is where we were forced to, in order to protect our investment in our advertising and in our merchandise, that we had the "Wed-Lok" exclusively for our area.

Q. I will call your attention to Exhibit No. 51, which is dated October 21, 1948, and that says "exclusive with LeRoy's."

A. That was the first time it was used. [41]

Q. "Wed-Lok, the rings that lock together."

A. That was the first time, because there was so much fraudulent advertising going on, in using the term "lok" in different forms, that we had to apprise the public and we did that, as I say, I think, for the first time that we had the "Wed-Lok exclusive" in our area.

Q. Now, you used the word "fraudulent," Mr. Shapiro. That is quite a harsh term to use, you will appreciate that. I don't like to have it in the record without some explanation of what you mean by that word. Are you meaning to imply that some concerns advertised "Wed-Lok" rings here and sold them as "Wed-Lok" rings when they didn't have any right to do so?

A. I am sorry to say I have to admit that is the truth. In fact, many stores called their rings "Wed-lok" right in our area. That was the unfortunate

Plaintiff's Exhibit R3—(Continued)

(Deposition of Benjamin B. Shapiro.)

situation. They are even doing it right now, as recently as the day before yesterday.

Q. Mr. Shapiro, if someone were to use the word, just advertised the word "lok" for rings, would you consider that as interfering with your business in the sale of "Wed-Lok" rings?

A. As far as that is concerned, I would say as long as we feature and have an investment in Granat Bros. merchandise, who have developed the term "lok" for a feature in their ring combinations, I would say it would, [42] seriously.

Q. Then, as far as you are concerned, Mr. Shapiro, as I understand your testimony, if the defendants in this action sold rings just under the word "feature" and nothing else, you wouldn't think that that was confusingly similar with the word "Wed-Lok," would you?

A. Well, if the principle was a copy of the "Wed-Lok" even under a different name, I would say that it would interfere with the sale of our merchandise.

Q. And it would cause confusion?

A. Yes.

Q. When you first began buying rings in May of 1947 from Granat Bros., that is, after they brought this new type out and began to put them out on the market again, did you have some conversations with anyone at Granat Bros. prior to the time that you purchased the rings?

Plaintiff's Exhibit R3—(Continued)
(Deposition of Benjamin B. Shapiro.)

A. As I said, back in '45, when I had lunch with the Granat Bros. people, they told me they were developing something that would revolutionize and be the most sensational development of this century. In fact, that was the term that was used.

Q. That was in '45, you say?

A. In the fall of '45, yes.

Q. I emphasize that because I think your testimony will show you used 1935 when you spoke on direct examination. [43]

A. No. If I did, I want to correct it, because it wasn't '35, it was in 1945. It was about ten years ago that we first started in with the "Wed-Lok."

Q. At that time was there some conversation about any patent on the ring?

A. Well, I have always taken for granted that anything that Granat Bros. would be working on, as diligently as they have for so many years, would be properly covered by patents.

Q. As a matter of fact, the word "patented" appears in a number of the ads which are exhibits now?

A. Yes; they gave us permission to because we understood that they were patented.

Q. They told you when you took on this line and bought these, that they would protect you, as far as patents are concerned and from anyone else imitating their ring?

A. From infringements, yes.

Plaintiff's Exhibit R3—(Continued)

(Deposition of Benjamin B. Shapiro.)

Q. When you sell these rings, Mr. Shapiro, when you box them, do you put them in your own boxes?

A. Yes, sir.

Q. Do you sell them through the mail as well as over the counter? A. Yes, sir.

Q. And when you sell them through the mail, you also put them in your own boxes? [44]

A. Yes.

Q. When I say "your own boxes," that is the box or the boxes with the name "LeRoy's" on it?

A. Yes, sir.

Q. I note in the ads which begin with Exhibit No. 43, I believe it is, on August 13th, that would be 1948, I notice that you use the words "This original 'Wed-Lok' ring." A. What is that?

Q. On August 13, 1948.

A. That was in combination when we started using—around there—the exclusive due to the fact that we were having so much difficulty and confusion there that we tried to acquaint the customers that we had with what we thought was the only, the original and the exclusive. That was the reason for it.

Q. When you say "the only and the original and the exclusive," you meant rings that locked together and were so locked together?

A. The "Wed-Lok."

Q. As a matter of fact, weren't you referring to rings that locked together when you said "the original"?

Plaintiff's Exhibit R3—(Continued)
(Deposition of Benjamin B. Shapiro.)

A. The "Wed-Lok" rings. In fact, the ad tells it just as it is. We tried to convey through the ads just exactly what we were selling and what the public could expect to get from LeRoy's. [45]

Q. That you tried to convey that other people were selling locked rings but that you were the original that brought out locked rings, is that correct?

A. Well, using the terms of the advertising, we couldn't very well say, "Now, here, anyone else in selling 'lok' rings is not doing the right thing." It isn't quite good business usage to put it that way.

Q. But that is what you thought and that is what you would like to have said?

A. Yes, indeed, we would like to have screamed that in headlines.

Q. The reason you would have liked to scream that was because when you took on this "Wed-Lok" ring you thought you were the only ones that would be able to sell a ring that was locked together, regardless of under what words they were sold?

A. We were assured that it was—and took for granted it was patented and we would be protected, and if we invested our money in that product, we could advertise it, feature it, and sell it and not have any infringements or anyone selling a product under a similar name and very often and even calling it "Wed-Lok" because salesmen in some of the stores don't draw such a fine line if a customer is

Plaintiff's Exhibit R3—(Continued)

(Deposition by Benjamin B. Shapiro.)

looking for a locking device ring; they call it "Wed-Lok." It isn't always with the knowledge and consent of the owner, however, because they have sales to make and commissions [46] to make and they are not going to lose a sale if they can avoid it.

Q. Now, Mr. Shapiro, if you were the first one, for example, to have brought a ring on the market that locked together, how would you have advertised it except using the word "lok" or "locking" in your advertisement to show what kind of a ring it was? Wouldn't you have had to use that?

Mr. Hursh: I will object to that as calling for speculation on behalf of the witness, what he would do if certain things happened. I do not think it is proper. It is calling for mere speculation on behalf of the witness.

Mr. Caughey: I wish to point out, as Mr. Hursh has very ably brought out before, this witness is very skilled in the business and he is well qualified to answer a question of this nature.

The Witness: I think I could, if you don't mind.

Mr. Hursh: You will have to answer the question.

The Witness: I would say that is something for the infringer to worry about; I wouldn't know how to do it myself.

Q. (By Mr. Caughey): I am talking about you, if you were the one to bring it out, the first one to bring this out, not Granat Bros.; if you were the

Plaintiff's Exhibit R3—(Continued)

(Deposition by Benjamin B. Shapiro.)

one who devised this locking ring, and let's assume that for the moment, [47] and you were advertising it to the public, how could you put over the features of the ring without using the word "lok"?

Mr. Hursh: The same objection.

The Witness: What shall I do?

Mr. Caughey: That is just for the record. Answer the question.

The Witness: I will answer it. I would just do like thousands of infringers do, just produce it and keep their fingers crossed and hope they would get away with it.

Q. (By Mr. Caughey): In other words, you would use the word "lok" to describe it?

A. If I were inclined to violate the law, there would be no other alternative; I would have to take chances.

Q. That is the best answer you can give to my question?

A. Yes, that is.

Q. I will again ask you, and I am not so sure that you understood my question, Mr. Shapiro, in view of your answer—therefore, I will endeavor to make it clear by reframing it.

My question was this: If you, instead of Granat Bros., had been the first one to bring out a ring, which locked together, as "Wed-Lok" does lock together, and [48] you were putting it over and selling it and advertising it, how else could you get the principle of the ring, that is, that it locked together,

Plaintiff's Exhibit R3—(Continued)

(Deposition by Benjamin B. Shapiro.)

over to the public than by using the word "lok" in your advertisement? Wouldn't it be natural for you to so advertise the ring that it did lock together?

A. Yes, I guess I did misunderstand your original question. Yes, I guess that would be the only way.

Q. That would be the only way, would it not?

A. Yes; thanks for straightening me out on that.

Mr. Caughey: That is all.

Redirect Examination

By Mr. Hursh:

Q. During the war period, were other types of material difficult for your firm to secure?

A. Oh, indeed; that is what put gray hairs in my head.

Q. Mr. Shapiro, where is your store located? That is, with reference to the center of the downtown shopping area?

A. It is right in the very heart of the shopping area.

Q. What is the address of your store?

A. 633 South Broadway.

Mr. Hursh: That is all. [49]

Recross-Examination

By Mr. Caughey:

Q. Were you aware of the fact, Mr. Shapiro, at the time you began selling "Wed-Lok" rings and, particularly in May of 1947, that there were a

Plaintiff's Exhibit R3—(Continued)

(Deposition by Benjamin B. Shapiro.)

number of other concerns throughout the United States that put out products using the word "lok" as a part of the name under which they sold their products and including products which would be sold through jewelry stores?

Mr. Hursh: I would like to object to the question unless Mr. Caughey identifies the particular products on which the name "lok" was applied or to which the name "lok" was applied. The question is too general.

Q. (By Mr. Caughey): Were you aware of the fact, Mr. Shapiro, that the Freeman-Daugherty Company of Providence, Rhode Island, had previously sold jewelry for personal wear under the name of "Nu-Lok?"

Mr. Hursh: I will object to that unless the term "jewelry" is specified as to what particular type of jewelry is involved and, therefore, I object to the question as being indefinite.

Mr. Caughey: Would you answer the question, please?

The Witness: I have only known of one firm in my jewelry experience and career that has used the term "lok" in connection with jewelry and that was Granat Bros. If there were others, I didn't know about it. [50]

Q. (By Mr. Caughey): And did Granat Bros., to your knowledge, use the word "lok" in conjunction with any other words except "Wed-Lok?"

Plaintiff's Exhibit R3—(Continued)

(Deposition by Benjamin B. Shapiro.)

A. Yes.

Q. What were some of the others that they used?

A. Their rings, going back to approximately ten years ago, that we handled and sold in our store.

Q. Were you familiar with the fact that Jacques Kreisler Sales Corporation of New York, prior to the time of May, 1947, had been using the word "Dubl-Lock" for wristwatch bracelets?

A. I don't recall, but if they did, I never noticed it.

Q. Have you ever heard of the trademark "Gem Lock" as used by the Gemex Company of Newark, New Jersey, for bracelet attachments?

A. I imagine in connection with the word "lock," I guess I lock the door of my car and my house, but in connection with rings, I have never heard the term "lock" used other than by Granat Bros.

Q. You are, naturally, as a merchant who is selling "Wed-Lok" on a large scale in Los Angeles and particularly on Spring Street—

A. On Broadway.

Q. —you are naturally concerned about anybody else selling rings with locks, in Los Angeles and, particularly [51] adjacent Spring Street, when they use the word "lok" as a part thereof, isn't that correct, as a part of the name under which they sell

Plaintiff's Exhibit R3—(Continued)
(Deposition by Benjamin B. Shapiro.)

the rings? You are naturally concerned, is that right?

A. Well, if the infringement—if it infringes the name and the construction on goods that I have invested my money in, I would be foolish not to be concerned.

Q. As you previously testified, if they use the word “lok” regardless of what word they used it with, in your opinion, that would be confusing, that would lead to confusion?

A. Well, if it infringed, I would say it would, very much so.

Mr. Caughey: That is all.

Mr. Hursh: That is all.

/s/ BENJAMIN B. SHAPIRO.

Subscribed and sworn to before me this 14th day of March, 1949.

[Seal] /s/ HORACE E. SNYDER,

Notary Public in and for the County of Los Angeles, State of California. [52]

State of California,
County of Los Angeles—ss.

I, Mack M. Racklin, a Notary Public in and for the County of Los Angeles, State of California, do hereby certify that Benjamin B. Shapiro, the witness named in the foregoing deposition, was, before

Plaintiff's Exhibit R3—(Continued)

(Deposition by Benjamin B. Shapiro.)

the commencement of his deposition, duly sworn to testify the truth, the whole truth, and nothing but the truth; that said deposition was taken, pursuant to notice at the time and place as herein set forth; that said deposition was taken down in shorthand by me and thereafter transcribed into typewriting, and I hereby certify the foregoing 52 pages contain a full, true and correct transcription of my shorthand notes so taken.

I further certify that it was stipulated by counsel that said deposition may be read, corrected and signed by the witness before any notary public in and for the County of Los Angeles, State of California.

I further certify that I am neither counsel for nor related to any party to said action, nor in anywise interested in the outcome thereof.

In Witness Whereof, I have hereunto subscribed my name and affixed my seal, this 24th day of February, 1949.

[Seal] /s/ MACK M. RACKLIN,
Notary Public in and for the County of Los
Angeles, State of California.

